Nos. 90-408 and 90-577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

COUNTY OF YAKIMA and DALE A. GRAY,
Yakima County Treasurer,
Petitioners,

v.

CONFEDERATED TRIBES AND BANDS OF THE
YAKIMA INDIAN NATION,
Respondent.

CONFEDERATED TRIBES AND BANDS OF THE
YAKIMA INDIAN NATION,
Cross-Petitioner,

v.

COUNTY OF YAKIMA and DALE A. GRAY,
Yakima County Treasurer,
Cross-Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR LA PLATA COUNTY, COLORADO; BANNOCK COUNTY, LEWIS COUNTY AND POWER COUNTY, IDAHO; BECKER COUNTY AND MAHNOMEN COUNTY, MINNESOTA; BLAINE COUNTY, FLATHEAD COUNTY, GLACIER COUNTY, LAKE COUNTY AND ROOSEVELT COUNTY, MONTANA; THURSTON COUNTY, NEBRASKA; MOUNTRAIL COUNTY AND SIOUX COUNTY, NORTH DAKOTA; CORSON COUNTY, DEWEY COUNTY, LYMAN COUNTY, TODD COUNTY AND ZEIBACH COUNTY, SOUTH DAKOTA; DUCHESNE COUNTY, UTAH; AND FREMONT COUNTY, WYOMING, AS AMICI CURIAE IN SUPPORT OF PETITIONERS

TOM D. TOBIN *
TOBIN LAW OFFICES, P.C.
422 Main Street
Winner, South Dakota 57580
(605) 842-2500
* Counsel of Record

(Additional Counsel Listed on Inside Cover)

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

SUSAN W. PAHLKE
Todd County Deputy
States Attorney
P.O. Box 432
Winner, South Dakota 57580
(605) 842-2551

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTEREST OF AMICI CURIAE

The concern that prompts the filing of this Brief can be simply stated. The tax records in county court houses are being rifled. Since 1987 tribal governments across the country, with the assistance and encouragement of the United States, have challenged the validity of county ad valorem taxes on Indian fee lands. Almost without exception, the tribal arguments are loosely premised on bits and scraps of language from several unrelated opinions of this Court in the 1970s. As a result, members of tribes have refused to pay their taxes (everywhere), tax abatement petitions have been filed (La Plata County, Colorado), individual lawsuits have been filed against counties in State courts (Corson County, South Dakota), tribal lawsuits have been filed against counties in federal courts (two in Montana), and even worse, the United States, just a year ago, after the decision below, targeted one *Amici* county and sued the county and the State in federal court in the name of the United States (Todd County, South Dakota). (Federal complaint with attachments; one inch thick, burdensome interrogatories and requests for production of documents). Apart from the fact that county governments can ill afford to squander scarce resources on senseless litigation, the issue here threatens the very core of county fiscal integrity.

The Counties joining in this Brief all contain areas that at one time were established as Indian Reservations. They are representative of many other counties similarly situated throughout the United States. As this Court has often noted, fee lands are scattered throughout the counties, some of which are owned by Indians and Indian Tribes. The history of each area is, of course, as varied and diverse as federal Indian policy—with one exception. Historically, every county has routinely taxed these fee lands and this practice has been the accepted rule for decades.

To be sure, the extent of Indian fee ownership varies from reservation to reservation and reflects radically different fact situations. As *Amici* States note, the precise

amount of lands nationally has not been determined. Locally, tribal enrollment lists are not ordinarily available to county governments and even these lists do not include non-member Indians, who also own fee property. So we are not certain of the total sum involved. One thing, however, is certain. The amount is substantial—because these counties also contain large areas of other lands that are non-taxable and held in trust by the United States for Indians and Indian tribes. For example, in Todd County, South Dakota, approximately 60 percent of the entire county is held in trust by the United States for the Rosebud Sioux Tribe or its members or other Indians. Of the taxable land, Indian fee land on paper roughly constitutes more than 10 percent of the seven hundred and fifty thousand ($750,000) to eight hundred and fifty thousand ($850,000) dollars of total taxes collected by the county per year in recent years. In Dewey County, South Dakota, the same figure represents roughly 8 percent of the total taxes collected. In other counties the percentage could be more and in some counties it is undoubtedly less. But the exact percentage is beside the point. Whatever the amount, county government in these areas is not some new and novel experience. It has been there for decades pursuant to Congressional Policy. That Congressional Policy has authorized the taxes here—and not on a case by case basis as the court of appeals has indicated. The issue in this case represents a fundamental and most basic concept in Federal Indian Law that has been resolved and relied on for decades. For this reason, *Amici* respectfully submit that this Court authoritatively document and set forth that concept in this case.

Although the United States did not participate below except as *Amicus* in support of the tribal petition for rehearing and suggestion for rehearing *en banc*, at that time the United States told the court of appeals that to tax Indian fee lands would "create an exception *without* any policy basis, from the general rule that the state may not tax Indians or their property on reservations." Memorandum for the United States at 2. By Order of January 7, 1991, this Court invited the Solicitor General to file a brief in this case expressing the views of the United States. The United States responded by *now* asserting in this Court that various Acts of Congress and judicial decisions "*changed*" the effect "that Section 6 (including its provision) otherwise would have". Brief for the United States at 15-16, n.10 (emphasis added). This is a significant concession. What the United States still did not tell this Court *Amici* would submit, is even more significant. Time and time again for almost three decades since the alleged change occurred, the United States has told everyone else, including this Court, a different story.

-SUMMARY OF ARGUMENT

Petitioners and *Amici Curiae* States have set forth in detail the reasons the court of appeals misconstrued *Brendale*, and while we agree with those important points, they are not repeated here.

The argument of *Amici Curiae* Counties centers around the fundamental validity of the taxes in question and the support for that position in the legislative history of the General Allotment Act and in the manner in which the United States and this Court have consistently construed this most important legislation.

ARGUMENT

I. The General Allotment Act Clearly Authorized the Taxation of Fee Patent Land.

Perhaps no other area of Federal Indian Law has been better understood than the taxing of Indian fee lands authorized by Congress in the General Allotment Act of 1887 (24 Stat. 388). In the beginning, even the general public was involved in the debate on the fundamental aspects of the question presented. Meetings were held, memorials passed, and Congress was inundated with the pros and cons of the allotment policy. When first introduced in 1881, the Senate debated the overall issue day after day. In subsequent years, the debate continued,

bills passed the Senate, were stalled in the House, and in 1887 the measure finally passed. Some of this legislative history was recently submitted to this Court by the United States in *United States v. Mitchell*, 445 U.S. 535 (1980). A more complete index is set forth in *Amici* App. 1a-2a. The General Allotment Act documents cited there are replete with evidence that Congress clearly intended, after the expiration of the twenty-five year trust, that Indian fee lands would be taxed as all other fee lands. For example, in 1881, the first provision that incorporated this concept stated:

> That the lands acquired by any Indian under and by virtue of this act shall not be subject to alienation, lease, or incumbrance, either by voluntary conveyance or by the judgment, order or decree of any court, or subject to taxation of any character, but shall be and remain inalienable, and not subject to taxation, lien, or incumbrance, for the period of twenty-five years from the date of the patent, which said restrictions shall be incorporated in the patents when issued. 11 Cong. Rec. 875 (1881). *Amici* App. 3a.

When Senator Dawes introduced the language of the present section in related legislation, he stated "The Indian, therefore, under the law will be to all intents and purposes the occupant of the land and enjoy all its uses and at the end of the twenty-five years the United States will be obliged by the force of this provision to give him or his heirs a patent discharged of the trust and free of incumbrance. It will be impossible to raise the question of taxation under that provision . . . 13 Cong. Rec. 3211 (1882). *Amici* App. 5a-6a.

It was clear, as Senator Coke stated in similar debate, that "Section 5 prohibits the alienation of land by the Indians; it exempts the land from taxation, from lien or incumbrance *for twenty-five years.*" 11 Cong. Rec. 876-877 (1881) (emphasis added). And thereafter, the record is replete with similar statements, "Mr. Dawes. . . . The bill protects the property of the Indians for twenty-

five years. *That is the limit.* That is the intent of the bill." 15 Cong. Rec. 2242 (1884) (emphasis added). Other representative statements to this same effect are set forth in *Amici* App. 3a-10a.

When Congress amended this provision for unrelated reasons in the Burke Act in 1906 (34 Stat. 182), this understanding was reflected in the text of the Act, as Petitioner and *Amici* States have discussed at length. It is also reflected in the legislative history set forth verbatim in *Amici* App. 16a-56a and in the related documentation in *Amici* App. 57a-179a.

As one would expect, in other instances, whenever the subject was addressed in congressional debate or in House or Senate Reports, the explanation was always the same—both before and after the Burke Act of 1906. For example, when Congressman Burke addressed the House of Representatives in 1904, he referred to the twenty-five year trust exemption twice in the same debate:

> The man who goes into that section of the country goes in there with a handicap of one-fifth of the land *nontaxable for twenty-five years*, and he has got to pay his proportionate increase of the expenses of that community for all that time. . . . The Indians will have the benefit of the roads, of the courts, and the benefits of a county and State government without contributing a cent therefor, their lands being *nontaxable for twenty-five years*, as before stated, while the settler who takes a homestead and acquires title to the same must do his share in paying these expenses. . . .

38 Cong. Rec. 2830 (1904) (emphasis added).

And in 1910, when Senator Gamble submitted a Report for the Committee on Indian Affairs, the Report similarly reflected this understanding:

> Considering the fact that the Indian allotments are *relieved from taxation for a period of twenty-five years* and the Indians are to receive like advantages with the whites in connection with the above, it is thought by your committee that such a provision is

> wise, equitable, and just not only to the Indians but to the prospective settlers. . . .

S. Rep. No. 68, 61st Cong., 2d Sess. at 4 (1910) (emphasis added).

Although Congress continued to amend the General Allotment Act over the course of the next two decades, none of the subsequent Amendments or supporting congressional documentation specifically focused on the fact that the tax exemption was tied to the twenty-five year trust period. It was presumed that this was naturally the case and there was no perceived need to ever clarify or direct any remarks to this point in any of these materials. However, the adoption of a more liberal policy for the issuance of fee patents in 1917 did eventually prompt Congress to indirectly address this commonly held presumption and in so doing, thereby lay to rest any argument or doubt that Congress could have ever intended or understood the exemption in any other way.

In 1917, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, adopted the more liberal policy of issuing patents in fee sooner to all Indians of less than half blood and issuing others on a less restrictive basis to those of larger percentage of Indian blood without individual applications. "Competency commissions" were dispatched to several reservations to accomplish this objective. This new declaration of policy provided in part that:

> The time has come for discounting guardianship of all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency. Broadly speaking, a policy of greater liberalism will henceforth prevail in Indian administration to the end that every Indian, as soon as he has been determined to be as competent to transact his own business as the average white man, shall be given full control of his property. . . .

L. Schmeckebier, *The Office of Indian Affairs, Its History, Activities and Organization*, at 152-153 (1927).

With this concerted policy as guidance, the consequences were predictably arbitrary, far reaching, and understandably subject to quick criticism and remedial action not at issue here. However, to the extent that premature taxation was stated as one necessary result of the process, the documentation surrounding the "forced fee" policy merits attention. With this limited purpose in mind, the documents are probative and unequivocal.

For example, by 1921 it was apparent to the Commissioner of Indian Affairs that apart from those "influences which sought to hasten the *taxable* status of the property" by "the termination of the trust title" and the issuance of "patents in fee", the degree of blood should not be a deciding factor to establish competency and applications should still be required:

> [A]s there are numerous instances of full-bloods who are clearly demonstrating their industrial ability by the actual use made of their land and who are shrewdly content with a *restrictive title thereto that exempts them from taxation*. . . .

L. Schmeckebier, *supra* at 156-157 (emphasis added).

Congressional attention first focused on the issue when Congressman Williamson from South Dakota was informed that the Department of the Interior could not take "corrective" action on a forced fee patent without express congressional direction. As a result, on January 18, 1926, the Secretary of the Interior, Dr. Hubert Work, forwarded a draft of a department bill to the Committee on Indian Affairs. As justification for the measure, Secretary Work explained:

> During the year 1919, and later, the then Secretary caused a great number of patents in fee simple to be issued to adult allottees, or to their heirs of less than one-half Indian blood, without application by the Indians for such patents, believing that such mixed-blood adult Indians were competent and capable of managing their own affairs. . . . This department canceled patents issued to two Coeur d' Alene Indians who had refused to accept their patents or

> to *pay taxes*, and suit was brought to cancel the assessments. The United States Circuit Court of Appeals, Ninth Circuit, in these two cases, *United States v. County of Benewah* and *United States v. County of Kootenai, Idaho* (290 Fed. 628), held that the Secretary of the Interior had no authority under the act of May 8, 1906, to issue a patent in fee to an Indian *allottee during the trust period without an application* therefor; that a patent so issued did not pass title and such patents having been refused, the cancellation of the patent was upheld. . . . [T]he department desires legislative authority to cancel such patents where there has been no voluntary sale or encumbrance of the land.

S. Rep. No. 536, 69th Cong., 1st Sess. at 2-3 (1926) (emphasis added), *Amici* App. 63a.

For the purpose of the issue here, Secretary Work shared the commonly held presumptions noted above:

> *[P]atents, prima facie, subject the lands to taxation and other liens.* . . . [I]ndians who had refused to accept their patents or to pay taxes. . . . Few of the Indians will or can pay taxes. . . . Practically all these lands have been placed on the tax rolls and some have been sold for nonpayment of assessments.

S. Rep. No. 536, 69th Cong., 1st Sess. at 2 (1926) (emphasis added), *Amici* App. 63a.

The bill was introduced on January 23, 1926. 67 Cong. Rec. 2630 (1926). In the House Report patents in fee are again equated with taxation:

> Under existing law it has been held by the courts that the Indians have a vested right in the *tax-free status* of their allotments *during the trust period* fixed by law. . . . [T]hey did not want their patents in fee on the ground that they would be unable to pay the taxes. . . . [F]oreclosure or tax deed or disposed of them by sale. . . . [A]cceptance of the fee patent and a waiver of *the tax-exempt privileges of a trust patent*. . . .

H.R. Rep. No. 1896, 69th Cong., 2d Sess. at 1-2 (1927) (emphasis added). *Amici* App. 67a. It passed the House

without debate and was reported in the Senate on April 2, 1926. 67 Cong. Rec. 6763 (1926). Shortly thereafter, on April 10, 1926, 67 Cong. Rec. 7272 (1926), the measure passed the Senate and was signed by the President on February 26, 1927. 68 Cong. Rec. 4892 (1927). Act of February 26, 1927 (44 Stat. 1247).

In 1930, in response to bill that would have created a commission to investigate the entire matter, the Department of the Interior proposed a letter of instructions to all superintendents to gather the information needed and then report back to Congress. H.R. Rep. No. 2269, 71st Cong., 3rd Sess., at 3-5 (1931). Once again, taxation of patents in fee was a stated premise in the list of the questions contained in the instructions:

> Has any of the land been sold for debt or taxes?. . . . If canceled, have tax assessments or tax sales been canceled or paid assessments refunded?. . . .

H.R. Rep. No. 2269, 71st Cong., 3rd Sess. at 4 (1931). *Amici* App. 83a.

After the materials from the instructions were compiled, the new Secretary of the Interior, Ray Lyman Wilbur, reported back to Congress and proposed a bill to amend the 1927 Act and address the unanswered concerns: namely, that the Department be authorized to cancel certain fee patents and return the land to trust status if any portion of the allotment was not encumbered.

In his letter of transmittal dated December 18, 1930, Secretary Wilbur shared the same assumptions regarding fee patents and taxation related by his predecessor, Secretary Work. H.R. Rep. No. 2269, 71st Cong., 3d Sess. at 3-5 (1931), *Amici* App. 83a.

Congressman Williamson reported the bill as amended in the House of Representatives on January 14, 1931. 74 Cong. Rec. 2193 (1931). This time even the text of the bill expressly reflects the concept of the *taxation of fee patents.*

> Provided, That this act shall not apply where any such lands have been sold for *unpaid taxes* assessed after the date . . . .

H.R. Rep. No. 2269, 71st Cong., 3d Sess. at 1-2 (1931) (emphasis added), *Amici* App. 83a.

The balance of the Report confirms the same understanding in every conceivable manner:

> [I]t has been held by the courts that the Indians have a vested right in the *tax-free status* of their allotments *during the trust period* fixed by law. . . . [T]hey did not want their *patents in fee* on the ground that they would be unable to pay the *taxes*. . . . [N]ot pay the rapidly accruing *taxes*. . . . [L]ands through foreclosure or tax deed or disposed of them by sale. . . . Placing a voluntary encumbrance upon or disposing of land so patented must in law be considered as an acceptance of the fee patent and a waiver of the *tax-exempt privileges of a trust patent*. . . . *Taxes*, or even *tax deeds* can not be said to be encumbrances of a character to prevent cancellation. . . . [A]s to the States examined provision is made for reimbursement to tax-certificate holders, with interest, in all cases where taxes have been canceled. . . . All purchasers at tax sale are put upon notice as to any defect in making the tax levy and are not innocent holders for value. . . . [C]ases where the lands may have been sold for unpaid taxes assessed after the date of the encumbrance.

H.R. Rep. No. 2269, 71st Cong., 3d Sess. at 2-3 (1931) (emphasis added), *Amici* App. 83a.

On January 28, 1931, Congressman Williamson was requested to explain the bill on the floor of the House of Representatives because he had made a "special study" of the matter:

> Mr. Williamson: It will mean this: There are still a few hundred tracts of land for which patents in fee have been issued without the consent of the holders of the trust patents, and if this bill is passed it will enable the Secretary of the Interior, upon the application of these Indians, to cancel the patents in fee to such of their lands as are unencumbered. This will have the effect of restoring their *trust-patent status*. In other words, this will mean that the lands

> will *no longer be subject to taxation* or any other kind of encumbrance, and the Indian will then be able to hold the lands without paying taxes *until* the 25-year period of the trust patent has either expired or the extension has expired. . . . The point is these forced fee simple patents were illegally issued. The courts have so held, and the Indians have the undoubted right to have the lands involved restored as trust property. The courts have also held that the Indian has a vested right to the tax free status of his land; that this is a right he is entitled to insist upon. . . .
>
> Mr. Williamson. *These trust patents carried a clause*, which is a part of the law authorizing the trust patent, providing that they shall remain in force for a period of 25 years from the time they were issued. So if these patents are restored they would become effective from the date of the trust patent that was superceded by a patent in fee; in other words, restores them to the status they had before the fee patent was issued. In some cases the 25-year period has been extended either by law or by Executive order. . . . [B]een filed by an Indian whose land has been restored to a trust patent status, the boards have restored the taxes to the Indian. . . . [M]y understanding is, from the information we now have, that there are only between 300 and 400 such tracts of land in the United States. . . . [T]hey found their lands had been *patented* and assessed and that taxes had accumulated. . . . [T]o meet the tax levies and to prevent their lands from being sold for *taxes*. . .

74 Cong. Rec. 3412-3413 (1931) (emphasis added), *Amici* App. 74a-78a. At the conclusion of his remarks the bill passed the House without further discussion. 74 Cong. Rec. 3413 (1931). The Senate adopted the entire House Report, noting that the facts were fully set forth therein and, after a short explanation and reference to the Report, passed the bill without further amendment on February 17, 1931. 74 Cong. Rec. 5195 (1931).

On at least one more occasion Congress revisited the issue in detail. Neither the 1927 Act nor the 1931 Act

provided for reimbursement of the taxes levied on the fee patented lands during the trust periods in question. In 1937, a bill was introduced to determine the status of each patent but it was rejected because the cost was estimated to exceed the amount involved. The next year, a measure that would have provided relief in one state was objected to for that reason. H.R. Rep. No. 669, 76th Cong., 1st Sess. at 2 (1939), *Amici* App. 103a. Finally, on January 3, 1939, a comprehensive bill was introduced. 84 Cong. Rec. 34 (1939).

In the most explicit materials to date, the exemption granted by the 1887 General Allotment Act trust patent was repeatedly tied to the trust period. The Secretary of the Interior, Harold L. Ickes was first to suggest the comprehensive approach. In a letter to the Chairman of the House Committee on Claims, the Secretary stated:

> *Patents in fee* having been recorded covering lands allotted to Indians the county authorities *naturally* felt they were entitled to assess and collect taxes thereon. Doubtless when requests were made for reimbursement of such taxes after the patents in fee were canceled and trust patents reinstated or reissued, the counties either did not have funds in their treasuries available for such payment or the county officials lacked legal authority to pay. *Clearly* the local authorities were not at fault for *taxing* such land *while patents in fee were outstanding*. . . . Upon cancellation of patents in fee, county officials have been requested to remove the allotment from the tax-assessment rolls, cancel any unpaid assessments, tax sales or tax deeds, and refund any taxes paid. . . . [N]ot subject to taxation by State authorities during the years the invalid patents. . . . [R]ight to exemption from taxation was vested. . . . [L]ands had not been sold for unpaid taxes assessed. . . .

H.R. Rep. No. 669, 76th Cong., 1st Sess. at 7-8 (1939) (emphasis added), *Amici* App. 103a.

He also suggested that the title be changed so as to read:

> A bill for the relief of Indians who have paid *taxes* on allotted lands for which *patents in fee* were issued without application by or consent of the allottees and subsequently canceled, and for other purposes.

H.R. Rep. No. 669, 76th Cong., 1st Sess. at 8 (1939) (emphasis added), *Amici* App. 103a.

Later, in response to a request from the Chairman of the House Committee on Indian Affairs for an Interior report on an identical bill, the acting Secretary of the Interior, E. K. Burlew, replied in nearly identical terms. S. Rep. No. 1488, 76th Cong., 3d Sess. at 5-6 (1940), *Amici* App. 122a. One month before the bill was reported in the House of Representatives, Secretary Ickes responded directly to the Chairman of the House Committee on Indian Affairs:

> *Clearly* the local authorities were *not at fault for taxing* these lands while such *fee patents* were outstanding. . . . *Taxes* were levied by the various counties against the lands of the Indians thus receiving these "forced" *fee patents*. . . .

S. Rep. No. 1488, 76th Cong., 3d Sess. at 3 (1940) (emphasis added). All three reports were then appended to the House Report from the Committee on Indian Affairs. S. Rep. No. 1488, 76th Cong., 3d Sess. at 2-8 (1940), *Amici* App. 122a.

The Committee Report itself contains a brief history of the legislation and reflects the understanding clearly set forth in the correspondence from the Department of the Interior:

> The levy and collection of taxes was a duty imposed upon local units of government by statutory law and the bonds of their officials. This was *not* their error. The error was by the United States Government. . . . *Lands so patented naturally* were *taxed until* the trust status was restored. . . . [T]he taxes *logically* levied. . . .

H.R. Rep. No. 669, 76th Cong., 1st Sess. at 1 (1939) (emphasis added), *Amici* App. 103a. The Report further noted that the Secretary concluded that an appro-

priation of seventy-five thousand dollars ($75,000.00) would be sufficient to take care of all cases, present and future. H.R. Rep. No. 669, 76th Cong., 1st Sess. at 2 (1939).

Two weeks before the Report, Attorney General Frank Murphy advised the chairman that this Court had just granted a petition for a Writ of Certiorari in *Board of Comm'rs of Jackson County, Kansas v. United States*, 100 F.2d 929 (1938), *modified*, 308 U.S. 343 (1939), to resolve the question of interest in the same kind of cases present in the bill under consideration. For this reason, the Attorney General recommended that no action be taken with respect to this legislation until the Supreme Court heard and decided the *Jackson County* case. H.R. Rep. No. 669, 76th Cong., 1st Sess. at 4 (1939). For purposes here, it is not without significance that the correspondence of Attorney General Murphy, which was also appended to the House Report, reflects the same understanding found throughout all of the Congressional materials noted above:

> [R]eimburse Indian allottees and Indian heirs of allottees for all *taxes* paid on so much of their allotted lands as, having been *patented in fee* prior to the expiration of the period of trust. . . . [C]ompensate Indian allottees for taxes erroneously collected from them and to relieve the political subdivisions of States of the burden of making restitution in such cases. . . .

H.R. Rep. No. 669, 76th Cong., 1st Sess. at 4 (1939) (emphasis added), *Amici* App. 103a.

As a result of the recommendation of Attorney General Murphy, it was not until the following year, 1940, that the House considered the bill on the merits. 86 Cong. Rec. 1628 (1940). When presented, it passed without amendment or debate. 86 Cong. Rec. 3007 (1940). The Senate Committee on Indian Affairs deemed the matter so fully explained in the House Report that it simply adopted and appended the Report in its entirety. S. Rep. No. 1488, 76th Cong., 3d Sess. (1940). Shortly

thereafter, the full Senate passed the measure without amendments or debate. 86 Cong. Rec. 6988 (1940). Act of June 11, 1940 (5th Stat. 298).[1]

II. The General Allotment Act Was Clearly Understood to Authorize the Taxation of Fee Patent Land.

Immediately after the passage of the 1887 Act, the Secretary of the Interior requested and received an opinion from the Attorney General of the United States. Among other things, this opinion clearly ties the tax exemption to the twenty-five year trust period.

> I am also of opinion that the allotment lands provided for in the act of 1887 are exempt from State or Territorial taxation upon the ground above stated with reference to the act of 1884, namely, that the lands covered by the act are held *by the United States for the period of twenty-five years in trust for the Indians*, such trust being an agency for the exercise of a Federal power, and therefore outside the province of State or Territorial authority.

19 Op. Atty Gen. 161, 169 (1888) (emphasis added). Later, opinions from the Department of the Interior reinforced this accepted construction. 30 L.D. 258, 266-267 (1900), 50 L.D. 591 (1924), 53 L.D. 107 (1930), 53 L.D. 133 (1930). With specific reference to the Yakima Indian Reservation, in 1930 the Interior Solicitor characterized the issue as follows:

> The United States thus retained its hold on the lands allotted for a period of 25 years after the allotment and as much longer as the President in his discretion might determine, and the *clearly expressed* intent of Congress is that *so long as* the land remains in *that* status it is beyond the power of the State to tax the same for any purpose.

53 L.D. 107 (1930) (emphasis added).

---

[1] More recent litigation related to this issue was resolved in *Nichols v. Rysavy*, 809 F.2d 1317 (8th Cir. 1987), *cert. denied*, 484 U.S. 848 (1987).

This construction of the 1887 Act is repeatedly reflected in every related opinion of the Department of the Interior thereafter until 1989. On April 21, 1989, the 1979 opinion that restated this position was simply rescinded. After citing several cases decided by this Court in the 1970s, an Associate Solicitor of the Department of the Interior reasoned that:

> [L]anguage in some of those decisions suggests the state is on weaker ground when it attempts to tax Indian ownership of land. . . .

Memorandum at 1, BIA. IA. 0943, April 21, 1989. (This Court briefly reviewed some of these same decisions in *Duro* v. *Reina*, 110 S.Ct. 2053 (1990). In contrast to the broad characterization of the Associate Solicitor, *Duro* particularly described the exemption noted there as extending to only "certain taxes on transactions of tribal members. . ." *Duro*, 110 S.Ct. at 2606.) On balance, the prior Interior opinions are entitled to more weight than the 1989 Memorandum. *See*, e.g., *Duro*, 110 S.Ct. at 2063. Other historical sources confirm this position.

The annual reports of the Secretary of the Interior, the Commissioner of Indian Affairs, and the Board of Indian Commissioners, compiled and communicated to Congress each year, are replete with evidence of the historical understanding that this tax exemption was intended and understood to correspond with the trust period. Representative excerpts from these reports are set forth in more detail in *Amici* App. 123a-179a. From the beginning, the Secretary of the Interior quoted the Commissioner of Indian Affairs' conclusion in support of this position:

> Even in the cases where, by taking their lands in severalty, they are in process of becoming citizens, they are still in a state of quasi-independence, because the General Government withholds from them for tweny-five years the power of alienating their lands, while by *exempting them from taxation for the same period*. . . .

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 52nd Cong., 2nd Sess. at 38 (1891) (emphasis added), *Amici* App. 131a.

And the Commissioner of Indian Affairs expressed the same principle in more than one way:

> Under a principle of law recognized by the courts, *real property held in trust by the Federal Government is not taxable by the State*. . . .
>
> At the same time, with the exception that their lands received under allotment laws will be *exempt from taxation for a period of twenty-five years*, and possibly longer, they will be subject to the burdens borne by other citizens, and must manage their own affairs. . . . Annual Report of the Commissioner of Indian Affairs at 13, 56 (1927) (emphasis added), *Amici* App. 172a.
>
> It also confers authority on the Secretary of the Interior, in his discretion, to *terminate the trust period by issuing a patent in fee* simple whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs. . . . Report of the Commissioner of Indian Affairs, H.R. Doc. No. 5, 59th Cong., 2nd Sess. at 49 (1906) (emphasis added), *Amici* App. 154a.

The Board of Indian Commissioners was authorized by statute in 1869 and organized by an Executive Order of President Grant that same year. In its annual reports to the Secretary of the Interior, the Board made detailed recommendations on the broad Indian policy questions of the day. Because one-half of the members of the 1887 Board continued to serve for the next two decades, it was an informed and influential institution. Year after year the annual reports confirm the essential principles set forth above. Any one of several examples make the point:

> The lands allotted to the Indians are *exempt from taxation for a period of twenty-five years*. . . . Annual Report of the Board of Indian Commissioners at 8 (1887) (emphasis added), *Amici* App. 126a.

The reception of an allotment of land to which the *title is by law protected from alienation or taxation for twenty-five years.* . . . Annual Report of the Board of Indian Commissioners at 7 (1902) (emphasis added), *Amici* App. 149a.

We have understood that it was largely the wish on the part of the present Commissioner of Indian Affairs to protect allottee Indians against the evils which follow the sale and the use of intoxicants, which led him to advocate the amendment to the general severalty act known as the Burke law, by which Indians allotted after May 8, 1906, do not become citizens by virtue of allotment until after the expiration of *twenty-five years*, the period covered by the *protected title* to their lands—the *trust deed* from the United States *which keeps* Indian allotments inalienable and *untaxed* for that length of time. . . . Annual Report of the Board of Indian Commissioners at 7-8 (1906) (emphasis added), *Amici* App. 155a.

> [T]he wise statesmanship of Senator Dawes and others who framed and carried into effect the Dawes Act of February, 1887, proposed to train Indians for citizenship by intrusting them at once, on allotment, with the duties and the conscious responsibilities of active, local citizenship, and with the manhood—stimulating right of suffrage, while the homestead was made inalienable and was *freed from taxation by* the United States *trust deed* for twenty-five years. . . . Annual Report of the Board of Indian Commissioners at 8 (1906) (emphasis added), *Amici* App. 155a.

In addition to the annual reports, guest speakers such as the Commissioners of Indian Affairs and Senator Dawes were invited each fall to address the Board at its Lake Mohonk Conference. The proceedings were transcribed and appended to the annual report, and constitute yet another source that reflects this same understanding. For example, in 1893 Senator Dawes referred to "[a]llotted Indians, *not* a foot of whose land can be *taxed for twenty-five years*" . . . . Proceedings of the Board of Indian Commissioners at 11th Lake Mohonk Indian Conference as reported in the Annual Report of the Board of Indian Commissioners at 61 (1893) (emphasis added). In 1895, Commissioner of Indian Affairs Browning similarly stated "[w]hen the lands are allotted to the Indians and they become citizens, under the law the lands are *not taxable for twenty-five years*" . . . . Proceedings of the Board of Indian Commissioners at 5th Lake Mohonk Indian conference as reported in the Annual Report of the Board of Indian Commissioners at 37 (1895) (emphasis added). Early texts by other authorities support this same construction.

For example, F.E. Leupp, the Commissioner of Indian Affairs at the time of the 1906 Burke Act also viewed the restrictions on taxation as tied to the trust status of the land. In his 1910 text, Commissioner Leupp summarized the administration of the General Allotment Act from his perspective and discussed the taxation issue in the context of fee lands. Leupp, *The Indian And His Problem*, 34, 47, 64, 75 (1910). (Also, *see Amici* App. 46a, 50a, where the recommendations of Commissioner Leupp are contained in the House and Senate Reports on the Burke Act.)

James McLaughlin worked for fifty-two years, 1871-1923, in the Indian service. As an inspector in the Department of the Interior, he had more experience in dealing with the General Allotment Act than any other individual of his time. In 1910, he summarized this experience in the following words:

> In the process of civilization, they had arrived at a stage of their progress when, as part of the usual policy, they were given their lands in severalty. To each individual was allotted one hundred and sixty acres of land, the title to which was to be held in trust by the government for twenty-five years and then patented in fee to the allottee. The allotted lands were to be free of taxes *during* the trust period.

McLaughlin, *My Friend the Indian*, 106 (1910) (emphasis added). *See* Pfaller, *James McLaughlin, The Man With the Indian Heart*, xi, 331-332 (1978).

Later, the Institute for Government Research published a series of authoritative monographs giving a detailed description of each of the more distinct services of the government. In 1927, Laurence F. Schmeckebier's *The Office of Indian Affairs, Its History, Activities and Organization*, the most extensive text on the subject to that date, reflects this same understanding. "[T]he several states are not allowed to tax Indian property *held* by the United States *in trust* . . . . [T]ribal and allotments *held in trust* are exempt from state and local taxation . . . ." Schmeckebier, *supra*, at 9, 11 (1927) (emphasis added).

A year later, the Institute responded to a special request of the Secretary of the Interior with the publication of *The Problem of Indian Administration*, commonly called the Meriam Report after it's principal author. More will be said about this Report by others, but it is important to remember here that the explanation on taxation confirms again the opinions on this subject set forth above.

> When an Indian is declared competent to manage his own property and is given a *fee deed* to it, his property becomes *subject to state and local taxation*. . . .
>
> Under the allotment act the incompetent Indian holding a *trust patent* is generally *exempt from taxation*. On the day he is declared competent and is given his *fee patent*, he straightway becomes subject to the full burden of *state and local taxation*. . . . *The Problem of Indian Administration*, at 95, 477 (1928) (emphasis added).

Shortly thereafter, Dr. D.S. Otis was actually employed by the Bureau of Indian Affairs to write an entire book on the "History of the Allotment Policy". Through the efforts of the Commissioner of Indian Affairs, John Collier, Otis' monograph was inserted in its entirety in the hearing records of the Indian Reorganization Act of 1934 (Readjustments of Indian Affairs). Once again, in the most comprehensive and fact specific text to date, described by the editor of the 1973 edition, Francis Paul Prucha, as "a careful study of the carrying out of allotment in the years following the enactment of the law", the conclusion is the same:

> The Dawes Act, providing for the twenty-five-year Federal *trust period during which time* the land might not be encumbered, meant, it was clear, that no State could tax the allottee's holdings. . . . Otis, *The Dawes Act and the Allotment of Indian Lands*, at 105 Prucha edition (1973) (originally entitled *History of the Allotment Policy*) (emphasis added).

Citations to other scholarly works that have continued to confirm this understanding up to the present time could fill a small book. One recent thesis, by the same author cited by this Court in *Solem v. Bartlett*, 465 U.S. 463, at 480, n.25 (1984), F. Hoxie, entitled *Beyond Savagery, The Campaign to Assimilate the American Indians*, 1880-1920 states:

> For the remainder of his term, federal funds were used only for "restricted" non-tax-paying Indians. Patented tribesmen—who presumably paid property taxes—were usually expected to attend the public schools. . . .
>
> This was the doctrine of guardianship. As it evolved between 1890 and 1920, the concept of federal control over individual Indians was used to protect *land* titles, to continue *tax exemptions* on *trust* land. . . . The severalty law granted all allottees citizenship, but stipulated that their homesteads would be *held under a trust title* that prevented the sale of their land and *exempted them from taxation*. . . . F. Hoxie, *supra*, at 554, 566, 568 (emphasis added).

However, the most recent example undoubtedly is the 1991 article by a Bureau of Indian Affairs historian, from Washington, D.C. Michael L. Lawson. In this feature article, the author recounts:

> [T]he General Allotment Act provided that title to these allotments would be held in trust by the United States for at least twenty-five years *during* which time the land could not be sold, leased, *taxed*, mortgaged, devised by will, or otherwise encumbered

without the consent of the federal government. It was hoped that by the end of this probationary period, the individual allottee, who would then be eligible to receive the usual *fee simple title* to the land, would have learned how to make productive use of the acreage, to know its market value, and to be ready to assume full responsibility for it, including the payment of the *taxes*. . . .

[I]f this was found not to be the case, the law gave the President discretionary power to extend the *trust period*. . . . *S.D. State History Soc'y Quarterly*, No. 1 at 4 (1991).[2]

III. The General Allotment Act Has Been Consistently Construed to Clearly Authorize the Taxation of Fee Patent Land.

Although this Court generally discussed the General Allotment Act in *Draper v. United States*, 140 U.S. 240 (1891), it was not until 1903 that a tax related issue reached this Court in *United States v. Rickert*, 188 U.S. 432 (1903). There, the United States correctly headed its argument with the proposition that "the lands of the Indian allottees are not taxable under the authority of the State *during* the trust period" and concluded that improvements were similarly "exempt from taxation *during* the trust period that the land is so exempt, such improvements being in legal contemplation land". Brief for the United States at 15, 42, *Rickert*, *supra* (emphasis added). The *Rickert* opinion reflects this representation:

> no power in the State of South Dakota, for state or municipal purposes, to assess and tax the lands in question *until* at least the fee was conveyed to the Indians. . . . *While* the title to the land remained in the United States, the permanent improvements, could no more be sold for local taxes than could the land to which they belonged.

Rickert, 188 U.S. at 437, 442 (emphasis added).

A few years later, in *Goudy v. Meath*, 203 U.S. 146, (1906), a related issue was generally discussed and decisively resolved. The *Goudy* argument, addressed in detail by others, need not be repeated here.

[2] *See* Prucha, *The Great Father* (1984).

In *United States v. Nice*, 241 U.S. 591 (1916), a case involving a federal prosecution for the sale of liquor to a tribal member with a 1902 trust patent, the United States only indirectly touched on this aspect of General Allotment Act and the status of the individual:

> [C]ongress by this very act of 1887 expressly retained control over the allottee Indian's land *by restrictions of alienation and trusteeship*. . . . The State, having *no power to tax* these Indian [trust] allotments, had no particular interest in the Indian's welfare. . . . [I]t was well established that State laws relating to *taxation* of his [trust] property did not apply. . . .

Brief of the United States at 26, 21, 12, *Nice*, *supra* (emphasis added).

The Court in *Nice* referred to this aspect of the General Allotment Act when it described the holding in *Rickert*, *supra*,

> The act of 1887 came under consideration in *United States v. Rickert*, 188 U.S. 432, a case involving the power of the State of South Dakota to tax allottees under that act, according to the laws of the State, upon their allotments, the permanent improvements thereon and the horses, cattle and other personal property issued to them by the United States and used on their [trust] allotments, and this court, after reviewing the provisions of the act and saying, p. 437, "These Indians are yet wards of the Nation, in a condition of pupilage or dependency, and have not been discharged from that condition", held that the State was *without power to tax* the [trust] *lands* and other property, because the same were being held and used in carrying out a policy of the Government. . . .

Nice, *supra* (emphasis added).

Two years later, the United States was more succinct when it argued another tax exemption issue in *United States v. McCurdy*, 246 U.S. 263 (1918).

> Partial emancipation from the Federal guardianship, accompanied by restricted ownership of land *for a limited period*, as a method of educating and preparing the Indians for the duties of civilized life, was adopted by Congress at an early date and has become a settled national policy. . . . In *United States v. Rickert*, 188 U.S. 432, it was decided that *trust* allotments and personal property issued to Indian allottees could not be taxed by a State because this would be "to tax an instrumentality employed by the United States for the benefit and control of this dependent race". . . .

Brief for the United States at 9, 11, 12, *McCurdy, supra*, (emphasis added).

In *McCurdy*, the United States argued that land purchased with trust funds for an Osage Indian, as evidenced by a restrictive deed, should not be taxable by the State of Oklahoma. The *McCurdy* Opinion rejected the tax exemption argument of the United States in no uncertain terms. At the same time, the Court clearly restated the basis of *Rickert, supra*:

> There is also a *clear distinction* between the present case and those like *United States v. Rickert*, 188 U.S. 432, 23 Sup.Ct. 478, 47 L. Ed. 532, where it was sought to tax property, *the legal title of which was in the United States* and which was held by it for the benefit of Indians.

Brief for the United States at 266, *McCurdy, supra* (emphasis added). Nothing in *United States v. Nice, supra*, was argued or cited by the United States and *Nice* did not figure in the Opinion of the Court in *United States v. McCurdy, supra*, and correctly so.

A case more directly on point reached this Court in 1939. In *Board of Comm'rs of Jackson County, Kansas v. United States*, 308 U.S. 343 (1939), the United States equated a General Allotment Act trust patent with the exemption from taxation:

> The *trust patents* issued in fulfillment of that treaty and pursuant to the General Allotment Act of 1887

> [24 Stat. 388 (sec. 5), as amended by Act of May 8, 1906, c. 2348, 34 Stat. 182] bound by the United States to convey the land "free of all charge or incumbrance whatever" at the end of the *trust period. Such* [trust] *patents* have uniformly been construed to grant to the Indians a broad exemption from all forms of taxation effecting the land.

Brief for the United States at 6-7, *Board of Comm'rs of Jackson County, Kansas, supra* (emphasis added).

Although *Board of Comm'rs of Jackson County, Kansas* only involved the question of whether interest should be awarded when taxes were erroneously assessed, the opinion mentions the General Allotment Act and reflects the understanding of that time:

> The land which gave rise to this controversy, situated in Jackson County, Kansas, was [trust] patented under the General Allotment Act of February 8, 1887, 24 Stat. 388, 25 U.S.C. § 348. In pursuance of this Act, the United States agreed to hold the land for twenty-five years under the restrictions of the 1861 Treaty, subject to extension at the President's discretion. . . .
>
> In this legislative setting, the Secretary of the Interior in 1918, over the objection of M-Ko-Quah-Wah, cancelled her outstanding *trust patent* and in its place issued a *fee simple patent.* This was duly recorded in the Registry of Deeds for Jackson County. *In consequence* Jackson County in 1919 began to subject the land to its *regular property taxes.* It continued to do so as long as this *fee simple patent* was left undisturbed by the United States. . . . Jackson County in all innocence acted *in reliance on a fee patent* given under the hand of the President of the United States. . . . Here is a long, unexcused delay in the assertion of a right for which Jackson County should not be penalized. By virtue of the *most authoritative semblance of legitimacy under national law*, the land of M-Ko-Quah-Wah and the lands of other Indians had become part of the economy of Jackson County. For eight years after Congress had directed attention to the problem, those specially entrusted with the

> intricacies of Indian law did not call Jackson County's action into question. Whatever may be her unfortunate duty to restore the taxes which she had *every practical justification* for collecting at the time, no claim of fairness calls upon her also to pay interest for the use of the money which she *could not* have known was not *properly* hers.

Board of Comm'rs, supra at 348-349, 352-353 (emphasis added).

In 1943, in a most instructive case that involved a special modification of the twenty-five year trust limitation of the General Allotment Act, the United States recounted to this Court that the General Allotment Act "has been *uniformly construed* as conferring upon the Indians a vested 25-year tax exemption. . . ." and the United States conceded that subsequent to that period, the land was legally taxable. Brief for the United States, at 17, 43, *Mahnomen County v. United States*, 319 U.S. 474 (1943) (emphasis added). The *Mahnomen* decision reflects this important concession in no uncertain terms:

> It is *conceded* that any limitation on the County's power to tax *expired* in 1928 with the termination of the twenty-five year trust described below.

Mahnomen, 319 U.S. at 475 (emphasis added).[3]

In 1952, the United States in *Bailess v. Paukune*, 344 U.S. 171 (1952), generally described two instances where it deemed taxation to be "forbidden by the General Allotment Act".

> [w]hether *under trust patents* or *under fee patents with restrictions* upon alienation. . . .

Brief for the United States at 2, *Bailess v. Paukune*, *supra* (emphasis added).

Bailess involved the taxation of land of an allegedly Indian widow, who in due course was to receive a "fee

[3] Most of the important early cases of this Court are discussed in detail in the Brief for the United States, *Mahnomen, supra*. Also, *see Nichols v. Rysavy*, 809 F.2d 1317 (8th Cir. 1987), *cert. denied*, 484 U.S. 848 (1987), and *County of Thurston v. Andrus*, 586 F.2d 1212 (8th Cir. 1978), *cert. denied*, 441 U.S. 952 (1979).

patent" for the interest she inherited from her husband in a trust allotment. The Court concluded her interest was taxable if she was a non-Indian and in the process noted:

> This allotment was made under the General Allotment Act of February 8, 1887, 24 Stat. 388, 389. . . . No fee patent to the land has issued to *Paukune*, to his widow, or to the son. The trust period of twenty-five years has from time to time been extended. In other words, the United States still holds the land in trust for *Paukune* and his heirs. . . .

Bailess v. Paukune, 344 U.S. at 171-172 (emphasis added).

In 1956, in an income tax case that involved the General Allotment Act, as amended by the Burke Act of 1906, *supra*, the United States succinctly stated that:

> this provision was undoubtedly intended *to make it clear* that Indian lands transferred *in fee* to the Indians would *thereafter* be subject to state and local taxation. . . .

Brief for the Petitioner, note 4 at 13, *Squire v. Capoeman*, 351 U.S. 1, 13, n.4 (1956) (emphasis added). The opinion of the Court accepted the basic premise of the argument:

> The Government argues that this amendment was directed solely at permitting state and local taxation *after a transfer in fee*, but there is no indication in the legislative history of the amendment that it was to be so limited. . . . The literal language of the proviso evinces a congressional intent to subject an Indian allotment to *all taxes only after a patent in fee* is issued to the allottee.

Squire, 351 U.S. at 7-8 (emphasis added).

In 1973, in *United States v. Mason*, 412 U.S. 391 (1973), the United States noted that the Court in *Squire*:

> relied on language in an amendment to the General Allotment Act providing for *taxation of the land after the allottee receives a patent in fee* . . . [and] held that an amendment to the General Allotment

> Act created a tax exemption by implication, and that it required the return of the trust property without encumbrances at the end of the trust period . . . *and provided for taxation after the termination of the trust.*

Brief for the United States, at 9-10, 17, *Mason*, *supra* (emphasis added). The Court in *Mason* agreed:

> Moreover, the *Squire* decision rested heavily on the provision in the General Allotment Act providing for the removal of 'all restrictions as to sale, encumbrance, or taxation' *when Indian property is granted in fee.* . . .

Mason, 412 U.S. at 396 (emphasis added). Even Mr. Hobbs, arguing for the tribal respondents in oral argument, stated:

> The next thing that happens is that in 1906 Congress amends the General Allotment Act, and it says that—for the first time adds the idea that the trust period can end sooner than the 25 years intended if the Indian becomes competent sooner than that time. And it says that after he reaches the point of competency, the trust will end and he gets his land, and all restrictions as to alienation and *taxation are lifted.* This implies that Congress thought that the land was free of tax up to that point and well so. Over sixty years ago this Supreme Court, in 1903, had held that a restriction on alienation added up to a tax exemption. So, Congress assumed on very good authority in 1906 that the restriction on alienation was the equivalent of a tax exemption.

Tr. of Oral Argument, at 38, *United States v. Mason*, 412 U.S. 391 (1978) (emphasis added).

Most recently, in *United States v. Mitchell*, 445 U.S. 535 (1980), the United States reviewed the entire history of the General Allotment Act. Again, the United States told this Court the exemption to state taxation coincided with the trust period:

> The General Allotment Act . . . for the limited purposes of (a) restraining improvident alienation of the land by the allottees and (b) affording an immunity from state taxation for the period *during* which the legal title remained in the United States. . . .

Brief for the United States at 24, *Mitchell*, *supra* (emphasis added). In oral argument, Mr. Claiborne, arguing for the United States, said the same thing:

> That statute contemplated a scheme whereby the land of the reservation would be divided among the Indians within 25 years, and in the *meantime*, the United States was simply to hold title in trust solely for the *purpose* of preventing state taxation, it being legal title in the United States and therefore exempt from state taxation.

Tr. of Oral Argument, at 14, *United States* v. *Mitchell*, 445 U.S. 535 (1980) (emphasis added). This Court agreed:

> [W]hen Congress enacted the General Allotment Act, it intended . . . to prevent alienation of the land and to ensure that allottees would be immune from state taxation.

Mitchell, 445 U.S. at 544. At the end of this conclusion, the Court quoted at length and added emphasis to the remarks of Representative Skinner, the sponsor in the House of Representatives: ". . . 'land *is made inalienable and non-taxable for a sufficient length of time.*' . . ." *Mitchell*, 445 U.S. at 544, n.5 (emphasis as in original except for a sufficient length of time). In dissenting, Justice White described the holding of the Court in the same terms:

> The Court holds, however, that the 'trust' established by § 5 is not a trust as that term is commonly understood, and that Congress had no intention of imposing full fiduciary obligations on the United States. Congress' purposes, it is said, were narrower: to impose a restraint on alienation by Indian allottees while ensuring *immunity from state taxation during the period* of the restraint.

Mitchell, 445 U.S. at 546, 547 (White, J., dissenting) (emphasis added). It is significant that the arguments

the United States submitted in *Mitchell* were presented subsequent to the decisions of this Court that the United States now advances to undermine the same position.

In addition, in many cases, this Court has addressed in detail the arguments, principles and rules of construction that govern this case. *See, e.g., Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)[4] and *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 215 n.17 (1987). The Congressional documents set forth above more than satisfy the standards of clarity required here to sanction the taxation of Indian fee lands. It is too late in the day to give serious credence to an unsubstantiated argument that this understanding and established practice has been somehow repealed by implication—especially without anyone having even *mentioned* the fact until now.

CONCLUSION

The judgment of the Court of Appeals should be affirmed, except as to real estate excise taxes and the *Brendale* remand.

Respectfully submitted,

SUSAN W. PAHLKE
Todd County Deputy
States Attorney
P.O. Box 432
Winner, South Dakota 57580
(605) 842-2551

TOM D. TOBIN *
TOBIN LAW OFFICES, P.C.
422 Main Street
Winner, South Dakota 57580
(605) 842-2500
* Counsel of Record

July 1, 1991

---

[4] Even so, in the special area of state taxation, *absent* cession of jurisdiction or other federal statutes *permitting it*, there has been no satisfactory authority for *taxing* Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan* v. *Arizona State Tax Comm'n, supra*, lays to rest any doubt in this *respect* by holding that such taxation is not permissible *absent congressional consent*.

Mescalero Apache Tribe, 411 U.S. at 148 (emphasis added).

APPENDIX

APPENDIX
TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

APPENDIX

INDEX TO LEGISLATIVE HISTORY OF THE GENERAL ALLOTMENT ACT

The General Allotment Act or Dawes Act can be traced back to 1880 when similar bills were debated in the Senate beginning with S. 1773, 48th Cong., 2nd Sess. (1880). That bill was reported in the Senate at 10 Cong. Rec. 3507. Then in the 48th Cong., 3d Sess. (1881), S. 1773 was considered and amended. See 11 Cong. Rec. 761, 778-788, 873-882, 904-913, 933-943, 994-1003, 1026-1038, 1060-1070, 1211, 1096, and 1253.

In 1882, a similar bill, S. 1445, 47th Cong., 1st Sess. (1882), was introduced in the Senate as a replacement for Senate bills 19 and 931. See 13 Cong. Rec. 1824. That bill was amended and passed the Senate. See 13 Cong. Rec. 3212.

S. 48, 48th Cong., 1st Sess. (1883) was introduced next and referred to the Senate Committee on Indian Affairs. See 15 Cong. Rec. 13. It was reported back with amendments in 1884. See 15 Cong. Rec. 877. It was then debated, amended, and passed. See 15 Cong. Rec. 2240-2242, 2277-2280. In the 48th Cong. 2nd Sess. (1884), S. 48 was referred to the House Committee on Indian Affairs. See 16 Cong. Rec. 218. It was then reported back with accompanying House Report 2247 (H.R. 2247, 48th Cong., 2nd Sess. (1884) Serial Set #2328 Vol. 1). See 16 Cong. Rec. 580.

In 1885, S. 54, 48th Cong., 1st Sess. (1885) was introduced and referred to the Senate Committee on Indian Affairs. See 17 Cong. Rec. 123. It was reported back in 1886, see 17 Cong. Rec. 841, and was then debated, amended, and passed in the Senate. See 17 Cong. Rec. 1558, 1630-1635, 1674, 1719, 1762-1764. It was then referred to the House Committee on Indian Affairs, see 17 Cong. Rec. 1959, and reported back with House Report

1835. (H.R. 1835, 48th Cong., 1st Sess. Serial Set #2240 Vol. 8). See 17 Cong. Rec. 3841.

S. 54 was then debated in the 49th Cong., 2nd Sess. as well. See 18 Cong. Rec. 189, 224-225. It was amended and passed the House, see 18 Cong. Rec. 226, and then referred to the Senate Committee on Indian Affairs. See 18 Cong. Rec. 247, 313. The bill was then returned to the House. See 18 Cong. Rec. 273, 285, 315. The Senate non-concurred in the House amendments, see 18 Cong. Rec. 476, and a conference was then appointed. See 18 Cong. Rec. 478, 534, 580. A conference report was made, debated, and agreed to. See 18 Cong. Rec. 772, 882, 972. The bill was then examined and signed, see 18 Cong. Rec. 1048, 1054, and approved by the President. See 18 Cong. Rec. 1577 (1887).

In 1906, the Burke Act was signed, amending section 6 of the Dawes Act of 1887. The Burke Act began as House Resolution 11946, 58th Cong., 1st Sess., and was first referred to the House Committee on Indian Affairs. See 40 Cong. Rec. 1110. It was reported back with amendments, accompanied by House Report 1556, (H.R. 1558, 59th Cong., 1st Sess. Serial Set #4941 vol. 1). See 40 Cong. Rec. 2812. The bill was then debated, amended, and passed in the House. See 40 Cong. Rec. 3598, 3602. It was then referred to the Senate Committte on Indian Affairs, see 40 Cong. Rec. 3638, and was reported back with amendments and Senate Report 1998. (S.R. 1998, 59th Cong., 1st Sess. Serial Set #4904 vol. 1). See 40 Cong. Rec. 4153. The bill was passed over, see 40 Cong. Rec. 5189, 5605, and was then debated, amended, and passed in the Senate. See 40 Cong. Rec. 4805. The House concurred in the Senate amendments. See 40 Cong. Rec. 5980. It was examined and signed, see 40 Cong. Rec. 6089, 6100, 6233, and was approved by the President. See 40 Cong. Rec. 7795.

EXCERPTS FROM THE LEGISLATIVE HISTORY OF THE GENERAL ALLOTMENT ACT OF 1887

Mr. COKE. In section 5 of this bill it is provided:

That the lands acquired by any Indian under and by virtue of this act shall not be subject to alienation, lease, or incumbrance, either by voluntary conveyance or by the judgment, order or decree of any court, or subject to taxation of any character, but shall be and remain inalineable, and not subject to taxation, lien, or incumbrance, for the period of twenty-five years from the date of the patent, which said restrictions shall be incorporated in the patents when issued.

If the Senator's amendment prevails, will not that provision be rendered nugatory?

Mr. HOAR. I do not understand it so. . . .

11 Cong. Rec. 875 (1881).

Mr. COKE. . . . Section 5 prohibits the alienation of land by the Indians; it exempts the land from taxation, from lien or incumbrance for twenty-five years. . . .

11 Cong. Rec. 876-877 (1881).

Mr. COKE. . . . In the first place, his lands are exempt from judgment and from execution, are exempt from taxation, which those of no citizen are. . . .

11 Cong. Rec. 877 (1881)

Mr. COKE. . . . There is an exemption here from taxation. There is a prohibition against alienation. One is a privilege and the other a burden. They are put there for the benefit and protection of the Indian. . . .

11 Cong. Rec. 878 (1881)

Mr. BROWN. . . . It is true you exempt his land from taxes by this bill for a certain length of time. . . .

11 Cong. Rec. 880 (1881).

Mr. BROWN. . . . I trust, Mr. President, that we shall pass this bill in a shape that will give every Indian a home on his reservation, and guarantee it to him and his children for all time to come, and that the power of alienation will be restricted until he has learned the rights and the duties of an American citizen. After that let him and his posterity take care of it or alienate it as may any one else. Fix a reasonable time; exempt their homesteads from taxation. After that time there is no further exclusion in the fourteenth constitutional amendment in the way of counting them in the representative population of the States where they may reside, and no reason that I can see why they may not be full-fledged citizens and voters.

11 Cong. Rec. 882 (1881).

Mr. CALL. . . . But the bill cautiously and carefully proceeds with a preliminary period, a probationary period of twenty-five years, which shall be a period of preparation for them before their ownership of land shall be complete. . . .

11 Cong. Rec. 908 (1881).

Mr. PLUMB. . . . If that position of the bill which provides that these lands shall not be alienated and shall not be subject to taxation for a period of twenty-five years and shall not be leased until the same period shall pass, you will find about your doors here from year to year an increasingly tumult from the communities in which you have set thesse people, exempt from the burdens of the Government and occupying lands which they cannot cultivate—a tumult which you cannot prevent and the consequences of which you cannot avoid.

11 Cong. Rec. 942 (1881).

Mr. TELLER. . . . It is provided in the sixth line of the sixth section "that their lands shall not be subject to taxation or execution upon the judgment, order, or decree

of any court." That ought to be qualified so that they shall not be subject to taxation, judgment, &c., for a period of twenty-five years, because that will make it in harmony with the rest of the bill. . . .

11 Cong. Rec. 997 (1881).

Mr. DAWES. The matter which is involved in the lines on the third page, beginning with the proviso in the fifty-fourth line of section 1, has been discussed several times in the Senate; and to obviate all question about it, to reach precisely what is sought for in that proviso and at the same time avoid any question about the right of the State to tax this land so held by an Indian in severalty, I have prepared a substitute for the proviso, which I have shown to several members—not all, for I have not had time—of the Committee on Indian Affairs, and which I think will commend itself to the Senate. Therefore I move to strike out that proviso and insert what I send to the desk.

The ACTING SECRETARY. It is proposed to strike out, after the word "act," in line 54 of section 1, the following proviso:

Provided, That the title to lands acquired by Indians under the provisions of this act shall not be subject to alienation or incumbrance, either by voluntary conveyance or by the judgment, decree, or this order of any court, but shall be and remain inalienable and not subject to taxation, lien, or incumbrance for any purpose for a period of ten years from the date of patent, and until such time thereafter as the President may see fit to remove the restriction, which conditions shall be expressed in the patent.

And in lieu thereof to insert:

Which shall be of the legal effect, and declare that the United States does and will hold this land thus alloted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment

shall have been made; or, in case of his decease, of his heirs, according to the laws of the State of Oregon, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs, as aforesaid, in fee, discharge of said trust and free of all charge or incumbrance whatsoever.

Mr. DAWES. That, in short, Mr. President, provides that the United States shall hold the title itself to this particular severalty, but in trust for the sale use and benefit of each Indian getting his land in severalty. The Indian, therefore, under the law will be to all intents and purposes the occupant of the land and enjoy all its use, and at the end of twenty-five years the United States will be obliged by the force of this provision to give him or his heirs a patent discharged of the trust and free of incumbrance. It will be impossible to raise the question of taxation under that provision, and that will secure to the Indian his rights in severalty precisely as the other provision would.

The amendment was agreed to.

13 Cong. Rec. 3211 (1882). (Umatilla Allotment Act.)

Mr. DAWES. I offer the same amendment which I offered to the bill that has just passed, to strike out the proviso on the fifth page, beginning at the third line of the fifth section, down to and including the eleventh line, and insert:

Which shall be of the legal effect, and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs aforesaid in fee discharged of said trust and free of all charge or incumbrance whatsoever.

Mr. COKE. While I do not see the necessity of that amendment, I cannot perceive that it will do any harm, and am willing as far as I am concerned, to accept it.

13 Cong. Rec. 3212 (1882).

Mr. CONGER. Before the bill goes over I wish to call the attention of the committee to one point to be considered before to-morrow morning. There is nothing said in the bill in regard to the taxation of this property. This alienable property of the Indians is distributed in all States and Territories where the lands lie, and there is an uncertainty in regard to the right of the State or Territory to tax the property. I think some provisions of that kind is worthy of the consideration of the committee.

Mr. DAWES. The bill protects the property of the Indians for twenty-five years. That is the limit. That is the intent of the bill.

Mr. CONGER. It does not say so in terms.

Mr. DAWES. It says so in absolute legal effect, because the United States is to hold the title. The title in fee remains in the United States for twenty-five years.

Mr. CONGER. But it is not to be inalienable for twenty-five years. I merely call attention to it. It seems to me there should be some provision by which this property could all be saved to the Indians and saved to them from any attempt at taxation.

15 Cong. Rec. 2242 (1884).

Mr. DOLPH. . . . We propose now to allot lands to them in severalty, and to make such lands inalienable for twenty-five years, and it is supposed that at the end of twenty-five years they will become capable of taking care of themselves. . . .

15 Cong. Rec. 2277 (1884).

Mr. COKE. . . . After providing that the patent shall be issued and shall convey the land in fee discharged of trusts at the end of twenty-five years, it reads:

Provided, That the President may withhold the issuance of the patent in fee in any case for such further time as he may deem to be for the interests of the Indians. And the trust created in the original patent shall be and remain in full force until the patent in fee be issued.

If the condition of affairs exists at the expiration of twenty-five years feared by the Senator from California, here is ample discretion reserved to the President of the United States to apply the proper remedy, and that is to withhold the patents. I think that is an abundant answer to the objection the Senator has made.

15 Cong. Rec. 2278-2279 (1884).

Mr. DAWES. . . . But as to the individual allotments the term is fixed at twenty-five years. It is fixed for several reasons. One is that the holding of land by the United States so that it can not be taxed in any community, for any unnecessary period of time, is irksome and unwise, unless there be some good reason for it. The allotment patent which is to issue after twenty-five years is only to issue to such Indians as in the opinion of the Interior Department are so far advanced in the outset as to give hope and encouragement that by this process they will be self-supporting at the end of twenty-five years from that time and be able to stand upon their own feet. I know the Senator would desire that the moment an Indian, like any white man, is able to take care of himself he should be free to dispose of his property like any white man. . . .

Mr. COKE. . . . The President must find these facts recited in this section of the bill to be true before he can put the machinery of this bill in motion. Then he must get the consent of two-thirds of each tribe before it operates upon that tribe. Then when the lands are surveyed patents are issued promising a fee-simple title to the Indians at the end of twenty-five years. At the expiration of that time, if there are any conditions surrounding the Indians which make it in the judgment of

the President improper that they should have the fee-simple title to the land, the President is authorized to withhold patents for an indefinite time. . . .

15 Cong. Rec. 2279 (1884).

Mr. DAWES. . . . Under a subsequent part of the bill the United States is to give him a patent, by which the United States covenants to hold for him for twenty-five years in trust this particular 160 acres, and at the end of twenty-five years to give him or his heirs a patent in fee.

17 Cong. Rec. 1630 (1886).

Mr. SKINNER. . . . Or shall he be converted into a civilized tax-payer, contributing toward the support of the Government and adding to the material prosperity of the country? . . . In addition thereto, his land is made inalienable and non-taxable for a sufficient length of time for the new citizen to become accustomed to his new life, to learn his rights as a citizen, and prepare himself to cope on an equal footing with any white man. . . .

17 Cong. Rec. 190 (1886).

Mr. PERKINS. . . . It has the warm endorsement and approval of the Secretary of the Interior, of the Commissioner of Indian Affairs, and of all those who have given attention to the subject of the education, the Christianization, and the development of the Indian race. . . . The bill provides for the breaking up, as rapidly as possible, of all the tribal organizations and for the allotment of lands to the Indians in severalty, in order that they may possess them individually and proceed to qualify themselves for the duties and responsibilities of citizenship. . . .

For that reason, as I have suggested, it meets the warm approval of all the Government officers whose duties bring them in close contract with the Indians, and it has also the indorsement of the Indian rights association throughout the country, and of the best sentiment of the land. . . .

18 Cong. Rec. 191 (1887).

Mr. DOLPH. . . . Do I understand that the changes made by the House amendments and the conference committee permit a lien or disposition of lands that shall be allotted to Indians in severalty after the lapse of a less period than that provided in the bill as passed by the Senate—twenty-five years? Also, do I understand that the provision inserted in the bill in the Senate——

Mr. DAWES. Will the Senator put his first interrogatory again?

Mr. DOLPH. My question is whether such changes have been made in the bill that instead of the bill as it passed the Senate providing that the land which shall be allotted to Indians in severalty can only be disposed of or be subject to liens after a period of twenty-five years, it now allows that to be done after five years?

Mr. DAWES. No, that has not been changed, except in this way, that the President may, in his discretion in any particular case, extend the time after the twenty-five years. The time limiting the power of alienation is not reduced at all, but has this further extension in the discretion of the President as to any particular case.

Mr. DOLPH. According to the conference report, when are patents to issue to the individual Indians?

Mr. DAWES. If the Senator will get the bill he will see. As soon as the individual Indian takes up his allotment he is to have a patent which shall be of the legal effect that the United States holds in trust this particular tract of land for the sole use and benefit of the particular Indian for the period of twenty-five years, at the end of which time the United States is to give him a patent in fee of the land; and then to that is added a provision that in any particular case the President may extend that twenty-five years' limit so that the United States shall in that particular case hold the land in trust for the Indian a further time.

18 Cong. Rec. 973 (1887).

EXCERPTS FROM THE LEGISLATIVE HISTORY OF S. 2068, 52ND CONG., 1ST SESS. (1892)

The Committee on Indian Affairs report back (S.2068) "a bill extending relief to Indian citizens, and for other purposes," with the recommendation that it pass with an amendment in the nature of a substitute, which strikes out all of the bill after the enacting clause, and insert the words reported in an amended bill herewith reported, reading as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the lands now allotted to or which may hereafter be allotted to any Indians in severalty, or which may be the property of any Indian citizens of the United States, when such Indians under the provisions of any existing law have become or shall become entitled to the benefits of and subject to the laws of any State, and when such lands shall be embraced in and as a part of any county or town organization, so as to enjoy full and equal participation in the benefits of such local government, and when the Indians enjoy their equal privileges as citizens, shall be subject to State and local assessment and taxation the same as any other lands similarly located in such State: *Provided, however*, That nothing herein contained shall authorize the sale or incumbrance of any such land on the account of such assessment and taxation, or in any manner interfere in the trust in which such lands are held by the United States while such trust continues: *And provided further*, That during the continuance of said trust said taxes so assessed and levied shall be paid from the Treasury of the United States to the county treasurer, or other legally authorized officer of the county or municipality to which said taxes are payable, at such times as said taxes shall become due and payable: *And also provided further*, That said

taxes shall only be paid on the receipt of the sworn statement of the county treasurer, or other legally authorized officer of the county or municipality to which said taxes are payable, showing that such tax has been legally assessed and levied, and that said tax is then due and payable, accompanied by the certificate of the Secretary of the Interior that said lands are within the State and county described in said statement, and that the lands therein described have been allotted in severalty, or belong to Indian citizens of the United States, and that he is satisfied, after such sufficient inquiry, that the assessment of the lands for taxation is a fair and reasonable one, and the taxes levied just and equitable, both independently and in proportion to the valuation and taxation of lands in the same county, town, or other municipal corporation: *And provided further*, That no moneys shall be so paid for road or highway taxes which by the laws of the State may be discharged by work, but the Indians owning such lands may be required to so discharge such taxes: *And provided further*, That the Secretary of the Interior shall be satisfied, and so certify, that the public expenditure of such taxes is fairly made to give the lands of such Indians their just share of benefit.

Sec. 2. That from and after the passage of this act there shall be paid annually, from any moneys in the Treasury not otherwise appropriated, such sum as shall be necessay to pay said taxes so certified under section one of this act.

[T]he following letter from the Commissioner of Indian Affairs gives his views upon the bill [excerpts]:

> [T]he matter to which Senator Manderson refers is unquestionably an evil attendant upon the allotment of lands in severalty to the Indians with a title inalienable for a specified number of years, during which the land cannot be taxed. . . .

> The Government . . . has wisely exempted Indian allotments from taxation for a period of twenty-five years, or longer, at the discretion of the President. So far as I am able to form an opinion on the subject, it seems to me that this nontaxable provision, coupled with the proviso that the land shall be inalienable for twenty-five years, is absolutely essential for the success of the scheme of individualizing ownership in Indian lands. . . .
>
> [A]nd thus hasten the day when the Indians will become citizens in fact, able and willing to bear all the burdens of citizenship. . . .
>
> This is necessary as a matter of good faith to the Indians who have ceded their lands to the government on the condition that their allotments should be inalienable for twenty-five years and exempt from taxation. . . .
>
> [A] portion of the income of which shall be devoted to the payment of the taxes upon the allotted lands during the period wherein they are exempt from individual taxation.

S. Rep. No. 1003, 52nd Cong., 1st Sess. 1-4 (1892).

Mr. COCKRELL. I should like to know who pays the taxes in the end? Are we to understand that the people of the United States are for twenty years to pay all the taxes out of their own funds upon the lands which are allotted in severalty to Indians? . . .

24 Cong. Rec. 1196 (1893).

Mr. COCKRELL. . . . and here is a proposition that these Indians, taking these lands free of all debt, drawing their annuities, able-bodied, stout, athletic fellows, are to sit upon that land for twenty years and make all the people of the United States pay their taxes.

. . . They have a trust fund. Let these taxes come out of that fund. . . .

24 Cong. Rec. 1196 (1893).

Mr. DAWES. I wish to call the attention of the Senator from Missouri [Mr. Manderson] to the existing situation. It is the United States which exempts all this property from taxation . . .

24 Cong. Rec. 1196 (1893).

Mr. DAWES. The Congress has thought that the best way to make citizens, self-supporting people out of these Indians, was to give them some of the United States land and hold it for them for twenty-five years exempt from taxation . . .

24 Cong. Rec. 1196 (1893).

Mr. COCKRELL. . . . I move to amend the part of the bill which reads: 'That the lands now allotted to or which may hereafter be allotted to any Indians in severalty,' by inserting 'under agreements already made.'

Those lands ought not to be exempted from taxation in the States and the people of the United States made to pay taxes on them. I want it limited. I do not want a provision to be inserted whereby Indians may go speculating in land . . . and make the people of the United States pay taxes on it. . . .

24 Cong. Rec. 1197 (1893).

Mr. MANDERSON. . . . We are in the unfortunate condition that by the act of the United States those lands are not taxable for twenty-five years . . .

24 Cong. Rec. 1197 (1893).

Under the act of February 28, 1887 [General Allotment Act], allotting lands in severalty to Indians on the various reservations, many Indians became citizens of the United States and of the State or Territory in which

said land is located, with all the rights and privileges pertaining thereto; but in doing this the act fails to lay on these Indian citizens all of the responsibilities and burdens full citizenship naturally carries with it. By exempting their lands from taxation for a period of twenty-five years . . .

H.R. Rep. 2509, 52nd Cong., 2nd Sess. 1 (1893).

. . . clearly the Indian's land can not pay tax for a period of twenty-five years from date of act [General Allotment Act] . . .

H.R. Rep. No. 2509, 52nd Cong., 2nd Sess. 2 (1893).

FIFTY-NINTH CONGRESS

SESS. 1. CH. 2348 1906

[182] CHAP. 2348.—An Act To amend section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," be amended to read as follows:

"SEC. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized

life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such [183] Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of this Act shall not extend to any Indians in the Indian Territory."

That hereafter when an allotment of land is made to any Indian, and any such Indian dies before the expiration of the trust period, said allotment shall be cancelled and the land shall revert to the United States, and the Secretary of the Interior shall ascertain the legal heirs of such Indians, and shall cause to be issued to said heirs and in their names, a patent in fee simple for said land, or he may cause the land to be sold as provided by law and issue a patent therefor to the purchaser or purchasers, and pay the net proceeds to the heirs, or their legal representatives, of such deceased Indian. The action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.

Approved, May 8, 1906.

CONGRESSIONAL RECORD INDEX

H.R. 11946

H.R. 11946—

To amend section 6 of an act approved February 8, 1887, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

Mr. Burke of South Dakota; Committee on Indian Affairs 1110.—Reported back with amendment (H.R. REPORT 558) 2812.—Debated, amended and passed House 3598, 3602.—Referred to Senate Committees on Indian Affairs 3668.—Reported back with amendments (S. REPORT 1998) 4153.—Passed over 5189, 5605.—Debated, amended, and passed Senate 5805.—House concurs in Senate amendments 5980.—Examined and signed 6089, 6100, 6233.—Approved by President 7795.

CONGRESSIONAL RECORD—HOUSE

JANUARY 15

* * * *

[1110] By Mr. BURKE of South Dakota: A bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"—to the Committee on Indian Affairs.

* * * *

FEBRUARY 21

[2812] Mr. BURKE of South Dakota from the Committee on Indian Affairs, to which was referred the bill

of the House (H. R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," reported the same with amendment, accompanied by a report (No. 1558); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

* * * *

MARCH 9

ALLOTMENT OF LANDS TO INDIANS

[3598] Mr. BURKE of South Dakota. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," which I send to the desk and ask to have read.

The Clerk read as follows:

Be it enacted, etc., That section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," be amended to read as follows:

"SEC. 6. That at the expiration of twenty-five years or thereafter, if the period has been extended by the President, and when the lands have been conveyed to the Indians by patent in fee, as provided in section 5 of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Terri- [3599] tory to which they may reside;

and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up with said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs, at any time cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."

With the following amendments:

Page 1, line 6, strike out "twenty-five years or."

Page 2, line 1, strike out "thereafter, if the period has been extended by the President."

Page 2, line 2, before the word "and" insert "the trust period."

At the end of the bill add: "*Provided further*, That until the issuance of fee simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States."

The SPEAKER. Is there objection?

Mr. FINLEY. Mr. Speaker, I reserve the right to object.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to ask the gentleman from South Dakota if the Committee on Indian Affairs has reported this bill; and if not, what committee did it come from?

Mr. BURKE of South Dakota. Mr. Speaker, I desire to say that the Committee on Indian Affairs has made a unanimous report on this bill, and it has the favorable report of the Department. It provides, first, to change the present Indian allotment law, so that an Indian when he takes an allotment does not become a citizen until he gets a fee simple patent. It also provides that the Secretary of the Interior may grant a fee simple patent when, after investigation, he becomes satisfied that the Indian has reached such a state of advancement and civilization that he is capable of managing his own affairs, and the gentleman from Texas ([Mr. STEPHENS] will recall that yesterday this matter was discussed in explanation of why there were so many of these individual cases in the Indian appropriation bill. The practice of the committee has been to put in such cases as might be recommended by the Department, and only such cases, and my recollection is that this provision was in one or more appropriation bills and passed the House at the last session, but that it went out in the Senate.

Mr. STEPHENS of Texas. Is the gentleman aware of the fact that the present Secretary of the Interior is holding up numerous applications for patents at the present time and is not issuing them, no demands having been made, and the allottees are entitled to them, and does he not think this might result in indefinitely preventing these people from becoming citizens of the State in which they live if the bill passed?

Mr. BURKE of South Dakota. I think not, Mr. Speaker; and as I indicated to the gentleman yesterday, I think the oiginal allotment law did not contemplate

that citizenship would go with the mere allotment of land. Of course this bill will not affect the status of any Indian allottees who has taken an allotment prior to this time.

Mr. STEPHENS of Texas. The gentleman will admit it affects his citizenship. He can not become a citizen until the Secretary of the Interior will permit him to become a citizen by issuing to him a patent.

Mr. BURKE of South Dakota. It does not affect the status as to citizenship of Indians who have taken allotments previous to the time when this becomes a law.

Mr. STEPHENS of Texas. Then what reason have you that this should become law?

Mr. BURKE of South Dakota. For this reason: Take it in my State, for instance, the Indians that have not yet received allotments and to whom allotments are now being made are the Indians in the remote portions and reservations that are commonly known as "blanket Indians," and they do not possess one single qualification entitling them to citizenship, and yet it is desirable that the lands be allotted to them. If citizenship goes with allotment, then I do not think there will be any allotment to any such Indians in the future.

Mr. FITZGERALD. I would like to make an inquiry. This bill, if I understand it correctly, makes two changes in the present law. First, it gives to the Secretary of the Interior power to issue patents, regardless of the twenty-five-year restriction, whenever he deems it proper.

Mr. BURKE of South Dakota. Yes, sir.

Mr. FITZGERALD. And, secondly, it changes the law so that the mere allotment of land to an Indian does not confer citizenship upon him.

Mr. BURKE of South Dakota. It leaves him subject only to the jurisdiction of the United States until he gets his fee simple patent.

Mr. FITZGERALD. Are those the only two changes?

Mr. BURKE of South Dakota. Those are the only changes.

Mr. CRUMPACKER. Under the law as it now stands the Secretary of the Interior does not have authority to issue fee simple patents to Indians whom he may conclude are entitled to them?

Mr. BURKE of South Dakota. That is true.

Mr. CRUMPACKER. And if this bill should become a law Congress would still have the power to issue patents in special cases notwithstanding the authority conferred upon the Secretary of the Interior.

Mr. BURKE of South Dakota. Congress would certainly have that power.

Mr. CRUMPACKER. I observed in the Indian appropriation bill that was up for consideration yesterday a number of pages of authority granted to the Secretary of the Interior to issue patents to numerous Indians. Those provisions occupied several pages in the bill, and it struck me that this kind of a law ought to be enacted in order to avoid the necessity of Congressional action in relation to these several cases. I suppose the recommendation of the Committee on Indian Affairs is guided almost entirely by the recommendations of the Interior Department?

Mr. BURKE of South Dakota. Entirely so; and all such provisions as appear in the Indian appropriation bill might go out on a point of order. Now I yield to the gentleman from Wyoming.

Mr. MONDELL. Mr. Speaker, I just came into the House and did not hear the discussion on the bill. As I understand it, at the present time all Indian patents are issued with a non-alienation clause, and that for the time within which the lands are not alienable the Indians, under this bill, would not become citizens.

Mr. BURKE of South Dakota. Not Indians who may take allotments after the passage of this act. It does not affect the status of any Indian who has taken an allotment when it has been approved by the Secretary of the Interior.

Mr. MONDELL. However, it will give the Secretary of the Interior power to withhold indefinitely final patents in fees simple and enable him to deprive them of citizenship.

Mr. BURKE of South Dakota. Not at all. Mr. Speaker, because of the absence of this change in the law they can not obtain a fee simple patent until the expiration of twenty-five years and unless Congress by special act grants them that privilege. The practice has been that in such cases we have granted the privilege on the recommendation of the Secretary of the Interior.

Mr. MONDELL. Under existing law, Mr. Speaker, the Indian becomes a citizen, as interpreted by the court, when he receives his allotment. I believe I am correct in that statement.

Mr. BURKE of South Dakota. That is the holding in the Supreme Court of the United States in the case of Heff.

Mr. MONDELL. Now, under this legislation the Indian remains the ward of the Government for twenty-five years after he takes his allotment, unless in the meantime the Secretary of the Interior sees fit to make him a citizen by granting him a patent in fee simple.

Mr. BURKE of South Dakota. Except that Congress may grant that privilege if it sees fit.

Mr. CURTIS. And, further, the agreement might provide that the title should become absolute or a fee simple title should pass, say, in ten years.

Mr. MONDELL. Yes; but—

Mr. CURTIS. The main advantage of this bill is that under exisitng law the Supreme Court has held that after a patent has issued (the court said the word "patent" was not happily chosen to express the thought which, it is clear, all parts of the section being considered, Congress intended to express), notwithstanding the Indian does not secure a title in fee for twenty-five years, he becomes a citizen of the United States, and that the State courts have full jurisdiction over him, but not over his property.

They can not assess and tax the lands, nor can a State enact a law which will prevent the Government, at the time agreed, conveying the allottee the land in fee. Now, this bill, if enacted, will leave him under the control of the Government until he secures a patent conveying the fee, whether he gets it under an agreement or whether it is issued to him under the law by the Secretary of the Interior. The Supreme Court held that the Indians to whom allotments were made under the act of 1887 were still wards of the nation, in a condition of pupilage or dependency.

[3680] Mr. MONDELL. In other words, Mr. Speaker, this legislation retains the Indian in his condition as a ward of the nation without rights of citizenship for twenty-five years after he receives his allotment. Whereas under present conditions he becomes a citizen upon receiving his allotment. Is not that a fair statement of the situation?

Mr. CURTIS. That is true, unless, as I said a moment ago, the agreement provides that the fee should pass in a shorter time.

Mr. MONDELL. If there is some special provision in a particular piece of legislation. Generally this puts off for twenty-five years the time in which an Indian may become a citizen of the United States.

Mr. CURTIS. Yes, sir—that is, by the mere taking of an allotment.

Mr. MONDELL. I understand.

Mr. CURTIS. He may become a citizen of the United States any minute he desires by leaving the reservation and taking up a residence apart from any tribe of Indians and adopting the habits of civilized life.

Mr. MONDELL. Under this law, however, if he does accept an allotment—and of course every Indian residing on a reservation will take an allotment, or ought to do so—he can not become a citizen within twenty-five years unless the Secretary of the Interior in the meantime shall issue him a patent in fee simple.

Mr. BURKE of South Dakota. Mr. Speaker, let me say to the gentleman he does not become a citizen on taking an allotment until it is approved by the Secretary of the Interior. So the Secretary of the Interior now has it within his power to withhold citizenship; yet the Indian may take an allotment.

Mr. MONDELL. Mr. Speaker, is a point of order pending?

Mr. FINLEY. Mr. Speaker, I reserved the point of order against the bill.

Mr. BURKE of South Dakota. Mr. Speaker, I yield to the gentleman from Montana for a question.

Mr. DIXON of Montana. Mr. Speaker, I want to ask the gentleman from South Dakota [Mr. BURKE] if the purpose of the bill is not to prevent the blanket Indians by wholesale becoming citizens by allotment, and still allow the intelligent Indians on application to become citibens by allotment?

Mr. BURKE of South Dakota. That is the purpose of the law, and, further, to protect the Indians from the sale of liquor.

Mr. CURTIS. It is a very great improvement over existing law.

Mr. DIXON of Montana. I thoroughly concur.

Mr. BURKE of South Dakota. It is in accordance, in my opinion, with what the original allotment law contemplated, and what was considered to be the law until the decision of the Supreme Court last April held otherwise.

Mr. DIXON of Montana. I know a case where the reservation assumed to be open where, under the decision of the Supreme Court, there is no way on earth to prevent the wholesale sale of whisky to those allotted Indians. Under this bill it will stop the sale of it to the blanket Indians.

Mr. FINLEY. Where are the Indians located who will be affected by this bill?

Mr. BURKE of South Dakota. Mostly in the reservations of the country, if not entirely in the reservations.

Mr. FINLEY. Within all the States and Territories? What Indians?

Mr. BURKE of South Dakota. The South Dakota Indians probably more than any others. I understand the application of the present law has been held not to apply to Territories.

Mr. FINLEY. Will this bill apply to Indians in the Indian Territory

Mr. BURKE of South Dakota. I think it would; yes, sir; though I am not sure that I am familiar with the general allotment law as to whether it applies to Indians within the Indian Territory or not.

Mr. FINLEY. In the Indian Territory?

Mr. BURKE of South Dakota. I have said I thought it would, but that I am uncertain.

Mr. FINLEY. Then to that extent it would affect the Indian Territory Indians, would it not?

Mr. BURKE of South Dakota. It would affect no Indian who had taken his allotment.

Mr. FINLEY. To what extent have the Indians in the Indian Territory not taken allotments?

Mr. BURKE of South Dakota. I will yield to the gentleman from Kansas, who is more familiar with that than I am.

Mr. CURTIS. So far as the Indian Territory is concerned, all the Indians have been made citizens of the United States, and they are citizens now. The allotments have all been made to the Seminoles; nearly all to the Creeks. They are being made to the Chickasaws, the Choctaws, and the Cherokees.

Mr. FINLEY. How many Indians in the Indian Territory have received their allotment?

Mr. CURTIS. That would be very hard to say. There are about 4,000 allotments yet to be made to the Choctaws and Chickasaws, but the patents have not been delivered to those who have been allotted in those two

tribes; nearly 7,000 patents have been delivered to members of the Cherokee tribe; nearly all patents have been delivered to the members of the Creek tribe, and allotments are complete among the Seminole tribe.

Mr. FINLEY. Would not the passage of this bill have the effect of delaying it?

Mr. CURTIS. It would not have that effect in the Indian Territory, because they were not included in the act of 1887; and the Government has made special agreements with the five tribes in the Indian Territory, and this law would in no way affect them.

Mr. FINLEY. I understood the gentleman from South Dakota to say a moment ago that it would apply to the Indians in the Indian Territory.

Mr. BURKE of South Dakota. I stated I did not know, and I yielded to the gentleman from Kansas, who did.

Mr. CURTIS. This law never applied to the Indian Territory.

Mr. FINLEY. Then I understand it does not apply to the Indians in the Indian Territory?

Mr. BURKE of South Dakota. It seems not.

Mr. KEIFER. I wish to ask the gentleman a question or two.

Mr. BURKE of South Dakota. I yield to the gentleman.

Mr. KEIFER. I want to know what there is in the bill that he has prepared that excludes it from general operation upon the Indian tribes in the Indian Territory.

Mr. BURKE of South Dakota. The gentleman from Kansas has just explained, I thought, that particular point.

Mr. KEIFER. A general law is likely to apply generally. Is there any reservation in this bill?

Mr. CURTIS. Not in this bill; this is simply an amendment to section 6 of the act of 1887. The act of

1887 excludes the Indians of the Indian Territory. Now, there is nothing in this bill bringing them within its terms. Therefore the two acts would be construed together, and under the rules of law it would be held that the original act not applying to the Indians in the Indian Territory, this act amending it would not apply to them. Now we have special agreements with the five tribes, under which allotments are being made to them. We have a bill pending, which will go to conference within a day or two, providing for final settlement of all their affairs. We have special provisions in the various agreements in regard to the sale of intoxicating liquors which have not been put in other agreements with Indians in the United States, and they have always been dealt with separately and distinctly. The agreements provide the conditions under which the deeds or patents shall be issued, which shall be subject to alienation and when they may be alienated; that homesteads shall not be disposed of for certain periods. As this bill only affects Indians with whom agreements are hereafter to be made, it can not under any circumstances apply to the members of the Five Civilized Tribes.

Mr. MONDELL. I fail to find any feature in your bill, from a hasty examination of it, that limits its provisions——

Mr. BURKE of South Dakota. Read the first line of the bill——

Mr. MONDELL (continuing). To future agreements with Indians.

Mr. CURTIS. I have heard the bill read and as I understand it, it only applies to agreements hereafter to be made.

Mr. BURKE of South Dakata. It only amends section 6 of the act of 1887.

Mr. KEIFER. The gentleman from Kansas makes a clear statement as to the existing law as to how it would apply, but the general rule is——

Mr. ADAMS of Pennsylvania. Mr. Speaker, I make the point of order that we can not hear.

Tht SPEAKER. The House will be in order.

Mr. BURKE of South Dakota. I yield to the gentleman from Ohio.

Mr. KEIFER. Not for any particular time. I was going to say to the gentleman from Kansas that the general rule is that a general law will repeal or supersede another general law unless there is some reservation against it, and it looks to me as though now, to avoid confusion, you better put some reservation in this bill if there is none there now.

Mr. BURKE of South Dakota. Let me state to the gentleman from Ohio that we have this proviso on the bill:

Provided further, That until the issuance of fee-simple patents all allotees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States.

[3601] Now, we certainly can not legislate to change the status of any citizen whose status has been fixed, and the Supreme Court in the Heff case state that we have not that right without the consent of the citizen to be affected and the consent of the State within which he resides.

Mr. KEIFER. I have no objection to that statement, but it does not cover the objection. It applies only to conditions that are already fixed; but there are cases that are to come, of applications to be made, allotments to be made in the future, and this may embarrass conditions existing in the Indian Territory; and no matter "whether there is a reservation in the act of 1887 or not, there is no reservation in this, and that is what I suggest—that the gentleman put in such a reservation. I am not opposing the bill.

Mr. CURTIS. A very few words would cover it, simply providing that the provisions of this act shall not extend to the Indians in the Indian Territory.

Mr. KEIFER. I suggest that had better be put in, so as to avoid any confusion.

Mr. FITZGERALD. I think the gentleman from Ohio entirely misunderstands this bill. The act of 1887—the general allotment act—which is known as the "Dawes Act," authorized the President to allot lands to Indians, excepting from the operations of the act the lands of the Five Civilized Tribes.

Mr. KEIFER. That has been stated over and over again; but this bill does not except from that, and that is the trouble. The gentleman comes in without having heard the discussion——

Mr. FITZGERALD. If the gentleman will wait a moment, he will find out that I not only have heard the discussion, but that I understand this, which he does not.

Mr. KEIFER. That is the gentleman's ipse dixit about it.

Mr. FITZGERALD. This bill which is now offered amends one section of the general allotment act. Does the gentleman contend that one section of that act, by being amended, repeals the reservation contained in the first part?

Mr. KEIFER. Certainly not. It does not affect that so far as it relates to the original act; but it does take the place, probably, of the act and gives a general application.

Mr. BURKE of South Dakota. I yield to the gentleman from Kansas [Mr. CURTIS] for the purpose of suggesting an amendment.

Mr. CURTIS. Mr. Speaker, I suggest the following amendment:

Provided further, That the provisions of this act shall not extend to the Five Civilized Tribes.

Mr. LACEY. In the Indian Territory.

Mr. CURTIS. In the Indian Territory.

The SPEAKER. Is there objection to the consideration of the bill?

Mr. FINLEY. One moment. I understand the gentleman from South Dakota to say as to these blanket Indians that parties could go in under the laws of the United States and sell them intoxicating liquors. Is that true?

Mr. BURKE of South Dakota. Under the decision in the Heff case, if liquor is sold to an Indian and the Indian happens to be an allottee, the person selling tht liquor to him can not be prosecuted under the laws of the United States which prohibit the sale of liquor to the Indians.

Mr. FINLEY. To what extent will this bill cut off the present or prospective right of suffrage from the blanket Indians?

Mr. BURKE of South Dakota. I can only answer that question by guessing at the number of Indians who have not taken their allotments, and I have endeavored to get that information.

Mr. FINLEY. Will it cut off the right of suffrage from any of the blanket Indians?

Mr. BURKE of South Dakota. Yes; I think it will.

Mr. CURTIS. None who have it now.

Mr. BURKE of South Dakota. It will not affect any who now enjoy that privilege.

Mr. FINLEY. But it will prevent the extension of the privilege to blanket Indians in the future until such time as they receive their patents.

Mr. BURKE of South Dakota. Yes.

Mr. FINLEY. And the gentleman is of the opinion that the blanket Indians as a rule are unfit for the exercise of suffrage?

Mr. BURKE of South Dakota. I most certainly am of that opinion.

Mr. STEPHENS of Texas. In what respect will it prevent the sale of whisky on the reservations to these Indians?

Mr. BURKE of South Dakota. I do not know that it will have any particular effect, because if liquor is sold now on the reservations it is a violation of the law.

Mr. STEPHENS of Texas. I would like to ask the gentleman if he can not frame an amendment that would protect them from being sold whisky when they are at the Capitol. [Laughter.]

Mr. BURKE of South Dakota. I do not think they have any right to sell liquor here or anywhere else to the Indians. I will yield to the gentleman from Minnesota.

Mr. STEENERSON. I understand the object of this bill is to apply to those Indians who hereafter, after the passage of this proposed act, shall be allotted lands in severalty?

Mr. BURKE of South Dakota. Yes.

Mr. STEENERSON. That the mere allotment of lands to such Indians in severalty shall not operate to make them citizens within the meaning of the liquor law?

Mr. BURKE of South Dakota. That is right.

Mr. STEENERSON. It can not affect those who already enjoy the high privilege of purchasing liquor?

Mr. BURKE of South Dakota. Certainly not.

Mr. STEENERSON. I understand further that in the proviso to this bill it is provided for granting lands in fee without any restriction; that that provision is not limited. That applies to all Indians anywhere that have allotments?

Mr. BURKE of South Dakota. It does.

Mr. STEENERSON. And is operative whether allotment has already been made or will be made in the future?

Mr. BURKE of South Dakota. Yes. Now I will yield to the gentleman from Wyoming.

Mr. MONDELL. Mr. Speaker, I would like to ask the gentleman from South Dakota in what manner this bill affects the status of Indians to whom allotments have been made at this time and who have heretofore enjoyed the privileges of citizenship?

Mr. BURKE of South Dakota. I will answer the gentleman's question by stating that it does not affect such

Indians any more than it affects the Members of this House so far as the question of citizenship is concerned.

Mr. MONDELL. Well, Mr. Speaker, that is a pretty strong statement. The Indian to whom allotment has been made has heretofore been held to be a citizen and granted the right to vote in certain localities. I do not understand that he has been allowed that privilege in all of the States. That privilege has not been exercised in the past by reason of any legislation clearly denominating him a citizen, as I understand it, but by interpretation. Now, we provide in this statute that during the trust period, which is twenty-five years, the Indian may not exercise the rights of citizenship and is not subject to the laws of the State or Territory in which he resides.

The gentleman from South Dakota is a lawyer, I believe, and I am not, but in my mind there is some question—and I want to know if that matter has been carefully considered—as to whether by any possibility this statute could affect the status of Indians who have heretofore been considered, by reason of being an allottee, entitled to the rights of citizenship.

Mr. BURKE of South Dakota. That question has been carefully considered. I think the gentleman is confused in his mind by the belief that because an Indian has the right to vote within a State that therefore he is a citizen; but a man may be a citizen of a State and not be a voter.

Mr. MONDELL. I am not confused on that point. It is true, however, that many Indians have been considered citizens, some of whom have exercised the right of franchise and some of whom have not. I simply want to be satisfied that this legislation would not affect the status of these men who have heretofore been exercising the rights of citizenship.

Mr. BURKE of South Dakota. I am positive, Mr. Speaker, that it does not.

Mr. CRUMPACKER. This bill does not affect the status of the voter. Thta is one of the rights of citizenship; that is fixed by the State itself. In Indiana we

allow a man to vote who is not a Citizen of the United States. An alien who has lived in the State one year, who has declared his intentions to become a citizen, can vote at all elections, but he will not be a citizen for five years; so the question of the voting status of Indians under the law as it exists can not be affected by this bill one way or the other.

Mr. MONDELL. I want to call attention to the fact that Indians have been allowed to vote on the theory that they were citizens and therefore entitled to vote.

Mr. CRUMPACKER. That is in your own State under the State law?

Mr. MONDELL. By reason of the fact of their being citizens of the United States.

Mr. CRUMPACKER. No Congress could take away a right to vote that is granted in your State by any kind of legislation that it could pass.

[3602] Mr. MONDELL. Mr. Speaker, upon the statement of the gentleman from South Dakota [Mr. BURKE] that in the opinion of the members of the committee the bill does not affect the status of Indians to whom allotments have heretofore been made, I have no objection to the legislation.

Mr. KEIFER. Mr. Speaker, the amendment offered by the gentleman from Kansas [Mr. CURTIS] I think has not been reported.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Add, at the end of the bill, the following: "*And provided further*, That the provisions of this act shall not extend to the Five Civilized Tribes."

The SPEAKER. The question is on agreeing to the amendments.

The question was taken, and the amendments were agreed to.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time; read the third time, and passed.

On motion of Mr. BURKE of South Dakota, a motion to reconsider the last vote was laid on the table.

* * * *

CONGRESSIONAL RECORD—SENATE

March 12

* * * *

[3668] HOUSE BILLS REFERRED

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," was read twice by its title, and referred to the Committee on Indian Affairs.

* * * *

[4153] REPORTS OF COMMITTEES

* * * *

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," reported it with amendments, and submitted a report thereon.

* * * *

[5189] ALLOTMENT OF LANDS TO INDIANS

The bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," was announced as the next business in order on the Calendar.

[5190] Mr. McCUMBER. I ask that the bill may be passed over, retaining its place on the Calendar.

The VICE-PRESIDENT. At the request of the Senator from North Dakota, the bill will go over, retaining its place on the Calendar.

* * * *

APRIL 20

[5605] ALLOTMENT OF INDIAN LANDS IN SEVERALTY

The bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," was announced as next in order on the Calendar.

Mr. KEAN. I do not see the Senator from South Dakota [Mr. GAMBLE] who reported the bill in the Chamber at this time, and so I ask that the bill go over.

The VICE-PRESIDENT The bill will go over, at the request of the Senator from New Jersey, without prejudice.

Mr. CLAPP subsequently said: In the absence of the Senator from South Dakota [Mr. GAMBLE] I should like to have the objection withdrawn to the consideration at this time of House bill 11946. The Senator from South Dakota who has the bill in charge is very anxious to have it passed. I hope the Senator from New Jersey will withdraw his objection.

[5606] Mr. KEAN. I do not know that I shall object to the bill, but I should like to have some explanation of it before it is passed. The title would indicate that it is a

bill of some importance and one which would give rise to debate.

Mr. CLAPP. I can make a very short statement in explanation of the bill.

Mr. KEAN. I have no objection to that.

The VICE-PRESIDENT. Does the Senator from New Jersey withdraw his objection to the present consideration of the bill?

Mr. KEAN. I withdraw the objection.

Mr. CLAPP. Mr. President, under the existing allotment law, when an Indian obtains his allotment he becomes a citizen, which divests the Federal Government of all authority over the Indian, have so far as there may be retained a restriction by the Government upon alienation of the allotment by the allottee. This has led to a most deplorable condition in many of the reservations. The purpose of this bill is to provide that in their future allotments the rights of citizenship shall not attach until the expiration of the trust period and the allottee obtains his patent. It is a bill in which the Department is vitally interested and one that should become a law.

The VICE-PRESIDENT. Objection being withdrawn, the bill will be read for the information of the Senate.

The Secretary read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

Mr. HEYBURN. I should like to ask the Senator from Minnesota a question. I understand him to state that this bill provides that Indians shall only become citizens of the United States after the lapse of the time in which they might prove upon their lands. Is that it?

Mr. CLAPP. Yes.

Mr. HEYBURN. Then here is the condition that confronts us: We have in Idaho the Nez Perce Indians, for instance, and the Coeur d'Alenes, who were provided for the other day. Some of those Indians are now in the possession of full citizenship. Would this bill prevent those

that are not already within the limits of full citizenship from completing their citizenship?

Mr. CLAPP. Yes, sir; it would.

Mr. HEYBURN. Then it would bring two classes of Indians on the same reservation?

Mr. CLAPP. Yes, sir.

Mr. HEYBURN. At 12 o'clock in the day the Indians who had before noon complied with the law and taken their lands in severalty would have one status as citizens and those who did not happen to get in at that time would be shut off from citizenship under this proposed law. It seems to me that there should be some amendment that would prevent a condition where one portion of a tribe would be citizens of the United States and occupy a position above the other portion of the tribe. That would hardly result in harmony in that tribe. It would create an aristocracy of citizenship.

I am in favor of the general principle of the bill, provided it is amended so as to avoid those embarrassments, and they would be serious embarrassments to the two tribes in the State which I in part represent here, because just now their lands are in the process of being alloted.

Mr. CLAPP. Mr. President, the condition to which the Senator refers, I think obtains to-day upon every reservation in the United States under the existing law. A portion of a tribe who have had their allotments made under the existing law advance to certain rights of citizenship. Those who have not received their allotments do not reach that point in citizenship. The trouble under the existing condition is that when they bet their first allotments, their trust deeds, they become citizens. It is true that under this bill those who have heretofore taken their allotments will have the rights of citizenship, because no law that Congress could pass could to-day divest them of the rights which they have, but the bill will for the future cure the evil that is found on these reservations, where the Indians by merely receiving their allotments pass be-

yond the jurisdiction of the Federal Government. We can not avoid the condition to which the Senator referred, because under the existing law there are two classes.

Mr. HEYBURN. I am anxious to perfect the bill rather than to defeat it. Now comes this provision at the top of page 2:

Then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law.

There is a discrimination in that provision between Indians who live in the Territories and Indians who live in the States, which I doubt if the Senator who prepared this bill intended should exist.

Mr. CLAPP. I do not think it exists, because no State could pass such a law.

Mr. HEYBURN. Well, then, why provide, as is provided in this bill? Of course, a State can not pass such a law after the Indians do become citizens, but why provide that a Territory shall not pass any law denying the Indians within a Territory the equal protection of the law?

Mr. CLAPP. Because we are legislating now for the Territories and not for the States. A State could not take away the rights of citizenship if it wanted to. We are legislating for the Territories, and provide in this bill that no Territory shall do it.

Mr. HEYBURN. Yes; but we use the words "State or Territory" in defining the laws to which they should be subject in line 4, on page 2.

Mr. CLAPP. No, sir; we use the words "State or Territory" in defining the rights that the Indian attains to. The bill provides:

Every allottee shall have the benefit of and be subject to the laws, both civil and criminal——

Mr. HEYBURN. Well, he already is in a State.

Mr. CLAPP. Not unless he has got his allotment he is not.

Mr. HEYBURN. The bill says "every allottee." It has been held by the Supreme Court of the Unted States recently th taevery allottee has attained to citizenship and has those rights, of course. There was a doubt about this until a recent time, but it has been settled.

Mr. CLAPP. What would the Senator like to suggest in the way of amendment?

Mr. HEYBURN. I should like to have time to look the bill over and make a suggestion.

Mr. CLAPP. I do not wish to take up the time of the Senate with a discussion of this bill this morning.

Mr. McCUMBER. Let me call the attention of the Senator——

Mr. GALLINGER. I ask that the bill may go over.

Mr. McCUMBER. Let me call the attention of the Senator to one matter. We are simply repeating the law as it now stands with reference to the Indians, and what has been the law ever since 1887. This bill does not add to it, but, on the contrary, the exact language of the law of February 8, 1887, has been recopied into this bill; so that it will not affect the question whether it comes in again or whether it does not.

Mr. HEYBURN. I should like to ask the Senator——

Mr. GALLINGER. I ask that the bill may go over.

The VICE-PRESIDENT. Under objection, the bill will go over without prejudice.

* * * *

[5805] ALLOTMENT OF INDIAN LANDS IN SEVERALTY

The bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the

Indians, and for other purposes," was announced as next in order.

The VICE-PRESIDENT. On April 20 last the bill was considered as in Committee of the Whole, and was read.

The Senate, as in Committee of the Whole, resumed the consideration of the bill, which had been reported from the Committee on Indian Affairs with amendments.

The first amendment was, on page 3, line 2, after the word "removed," to insert "and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent;" so as to make the proviso read:

Provided, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent.

The amendment was agreed to.

The next amendment was, on page 3, line 8, to strike out the words "the Five Civilized Tribes" and insert "any Indians in the Indian Territory;" so as to make the additional proviso read:

And provided further, That the provisions of this act shall not extend to any Indians in the Indian Territory.

The amendment was agreed to.

Mr. CLAPP. I desire to offer an amendment to the bill.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. Add at the end of the bill the following:

That hereafter when an allotment of land is made to any Indian, and any such Indian dies before the expiration of the trust period, said allotment shall be canceled and the land shall revert to the United States, and the Secretary of the Interior shall ascertain the legal heirs of such Indian and shall cause to be issued to said heirs and in their names a patent in fee simple for said land, or he may cause the land to be sold as provided by law and issue a patent therefor to the purchaser or purchasers and pay the net proceeds to the heirs, or their legal representatives, of such deceased Indian. The action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

* * * *

CONGRESSIONAL RECORD—HOUSE

April 27

* * * *

[5980] ALLOTMENT OF LANDS TO INDIANS

The SPEAKER laid before the House the bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians of the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," with Senate amendments.

The Senate amendments were read.

Mr. SHERMAN. Mr. Speaker, I move that the House concur in the Senate amendments.

The motion was agreed to.

On motion of Mr. SHERMAN, a motion to reconsider the last vote was laid on the table.

* * * *

[6089] ENROLLED BILLS SIGNED

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes;"

* * * *

CONGRESSIONAL RECORD—SENATE

April 30

[6100] ENROLLED BILLS SIGNED

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes;" and

* * * *

CONGRESSIONAL RECORD—HOUSE

* * * *

[6233] H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

* * * *

[7795] MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

A message, in writing, from the President of the United States was communicated to the House of Representatives by Mr. BARNES, one of his secretaries, who also informed the House of Representatives that the President had approved and signed bills of the following titles:

On May 8, 1906;

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

* * * *

HOUSE OF REPRESENTATIVES

59th Congress, 1st Session Report No. 1558

ALLOTMENT OF LANDS IN SEVERALTY TO CERTAIN INDIANS

February 21, 1906,—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

---

Mr. BURKE, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H.R. 11946]

The committee on Indian Affairs, to whom was referred House bill 11946, submit the following report:

The committee have amended the bill and, as amended, recommend that it do pass.

The amendments adopted are as follows:

In line 9, page 1, after the word "of," strike out the words "twenty-five years or," and strike out all of line 10, and insert in lieu thereof the words "the trust period."

In line 1, page 3, after the word "time," insert the word "to."

In line 4, page 3, after the word "removed," add an additional proviso, as follows:

Provided further, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States.

This bill proposes to amend the general Indian allotment law of 1887, and changes section 6 of said act so that hereafter, whenever an allotment of land is made to any Indian, citizenship will be withheld from such Indian during the trust period. It has generally been supported that where Indians had taken allotments under the general allotting law that they were still wards of the nation and subject to the jurisdiction only of the United States, and in cases where persons were prosecuted for selling liquor to Indians the courts assumed jurisdiction, regardless of whether the Indians had taken an allotment or not, but upon April 10, 1905, the Supreme Court of the United States decided otherwise in a case entitled "Matter of Heff," reported in 197 U.S. Reports, page 488, the opinion of the court being by Mr. Justice Brewer.

In that case Heff was convicted in the district court of the United States in the district of Kansas, under an indictment for having sold certain intoxicating liquor to an Indian and a ward of the Government; upon conviction he was sentenced to imprisonment for a period of four months and to pay a fine of $200 and the costs of the prosecution. He appealed, and the court of appeals of the eighth circuit sustained the decision of the district court, and he presented an application for a writ of habeas corpus to the Supreme Court. In effect the court holds that under the law, when an Indian takes an allotment, that he then becomes a citizen of the State or Territory in which he may reside and subject to the laws thereof, and is no longer a ward of the nation, subject to the police regulations on the part of Congress. In concluding the opinion the court says:

We are of the opinion that when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal of the State, it places him outside the reach of police regulations on the part of Congress; that the emancipation from federal control thus created can not be set aside at the instance of the Government without the consent of the individual Indian and the State, and that this emancipation from Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation and encumbrance, or the further fact that it guarantees to him an interest in tribal or other property.

The district court of Kansas did not have jurisdiction of the offense charged, and therefore the petitioner is entitled to his discharge from imprisonment.

Mr. Justice Harlan dissented.

Since this decision was rendered there has been more or less demoralization among the Indians, as most of them have taken allotments and liquor has been sold to them, regardless of the fact that they are Indians, and in the opinion of this committee it is advisable that all Indians who may hereafter take allotments be not granted citizenship during the trust period, and that they shall be subject to the exclusive jurisdiction of the United States.

The bill also provides and authorizes the Secretary of the Interior, in his discretion, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her own affairs, may cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, encumbrance, or taxation of said land shall be removed, and if that should be done it would follow as a matter of course, under the provisions of this bill, that the allottee would then become a full citizen and

no longer subject to the exclusive jurisdiction of the United States.

In the opinion of the committee this provision is advisable, as it will make it unnecessary for legislation granting fee-simple patents to individual Indian allottees, as has been done in every session of Congress for several years, and it places the responsibility upon the Secretary of the Interior and the Indian Department, who know best when an Indian has reached such a stage of civilization as to be able and capable of managing his own affairs.

The bill is recommended very strongly by the Commissioner of Indian Affairs and the Secretary of the Interior, and the reports are herewith submitted and are as follows:

DEPARTMENT OF THE INTERIOR,

Washington, February 14, 1906.

Sir: I am in receipt of your letter of the 16th ultimo, inclosing H.R. 11946, being "A bill to amend section six of an act approved February eighth, eighteen hundred and eighty-seven, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and in reply to your request for a report I inclose herewith copy af a letter from the Commissioner of Indian Affairs, dated the 8th instant, in which he suggests several amendments, and says that "if the bill is clarified by the amendments suggested there appears to be no good ground for objecting to it. The provision for fee-simple patents is especially desirable legislation, and is in harmony with the spirit of our law, while the present method of granting individual Indian citizens the control of their real estate by special enactment is tolerable only in the absence of any other possible method."

The views expressed by the Commissioner of Indian Affairs and the amendments suggested meet with my approval, and the passage of the bill is recommended.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,

House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, February 8, 1906.

SIR: I have the honor to acknowledge the receipt, by your reference of January 18, 1906, for report of a letter from Hon. J. S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, who inclose a copy of H. R. 11946, entitled "A bill to amend section 6 of an act approved February 8, 1887, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.'"

It changes section 6 to read as follows:

"That at the expiration of twenty-five years or thereafter, if the period has been extended by the President, and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside, and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits

of the United States to whom allotments shall have been made, and who has received a patent in fee simple under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States, who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizen, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs, at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."

The act of February 8, 1887 (24 Stat. 388), known as the general-allotment act, provides that after approval of allotments the Secretary of the Interior "shall cause patents to issue therefor in the names of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case, in his discretion, extend the period." * * *

Section 6 makes every Indian allottee under the act subject to the laws, both civil and criminal, of the State or Territory in which he may reside, immediately upon the issuance of a trust patent, and declares every Indian born within the United States, to whom an allotment shall have been made under any law or treaty, to be a citizen of the United States.

The bill under consideration postpones the time when an allottee taking lands after it is enacted is to become subject to the laws of the State or Territory of his residence and when citizenship is to be acquired until the issuance of the final or fee-simple patent—a period of twenty-five years, which may be indefinitely extended by the President.

Experience has demonstrated that citizenship has been a disadvantage to many Indians. They are not fitted for its duties or able to take advantage of its benefits. Many causes operate to their detriment. Some communities are too indifferent and others are financially unable to enforce the local laws where Indians are involved. The result is that the newly enfranchised people are free from any restraining influences. Degraded by unprincipled whites, who cater to their weaknesses, no protection is given them, because the United States courts have no jurisdiction and the local authorities do not enforce State laws.

The bill goes further, and makes ample provision to meet all cases where it would be for the best interest of the allottees to make citizens of them. It authorizes the Secretary of the Interior, in his discretion, "whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her own affairs, at any time cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."

This provision is perhaps the most important in the bill. It is a long step in the right direction, and the great

need of such a provision is apparent under existing law, and it would become all the more urgent if the other provisions of the pending bill should be enacted. There are many members of Indian tribes, full bloods, mixed bloods, and in some instances adopted white men, who are entirely competent to transact their own business and to take their places in the ranks of our common citizenship. If such allottees are given full control of their property they will be absorbed into the community in which they reside and bear their share of its burdens, while at the same time the number of "wards of the Government" will be gradually reduced. The process, however, is well safeguarded. Before a fee-simple patent is issued the bill makes it the duty of the Secretary of the Interior to satisfy himself of the civic competency of the allottee concerned. Through superintendents, agents, inspectors, and other officers the Secretary can make a thorough investigation of each case and take only such action as the facts may warrant.

In the past the Indian Office has made many recommendations for special legislation authorizing you to gratify the aspirations of individual Indians for citizenship by issuing to them patents in fee for their lands; but as a fundamental principle of good government, special legislation should be avoided and both the Department and members of Congress relieved of the importunities of interested parties for enactment designed to benefit only themselves.

The proposed amendment will not only substitute general for special legislation, but for those allottees who are not fitted for the responsibilities of citizenship it will provide a probationary period during which any who have both the ability and the ambition may prepare themselves for the desired change.

It may be argued that the bill leaves in some doubt the status of those Indians who will be allotted after it becomes law. In cases where the surplus lands are re-

tained and the reservation boundaries kept intact the allottees would doubtless continue wards of the Government and be subject only to the laws of the United States; whereas if the surplus lands be opened to settlement and the reservation substantially abolished, the question of jurisdiction might become a serious one. It would therefore, perhaps, be well to add the following proviso:

"*Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States."

The first part of amended section 6 will not make allottees subject to the laws of the State in which they reside in any case until the expiration of twenty-five years. The proviso to that section contemplates the shortening of the trust period and removes all restrictions as to the sale, incumbrance, or taxation on the issuance of a fee-simple patent. A previous provision of the section makes such patentees citizens of the United States. Although it would probably be held that a person who becomes a citizen of the United States thereby becomes subject to the laws of the State of which he is a resident. I think it would be wiser to remove all doubt by amending the first section by striking out the words "twenty-five years or thereafter, if the period has been extended by the President," and insert in lieu thereof the words "the trust period." Line 1, on page 3, also should have the word "to" inserted after the word "time."

If the bill is clarified by the amendments suggested there appears to be no ground for objecting to it. The provision for fee-simple patents is especially desirable legislation and is in harmony with the spirit of our law, while the present method of granting individual Indian citizens the control of their real estate by special enactment is tolerable only in the absence of any other possible

method. It is therefore most heartily recommended that this bill receive your approval.

Very respectfully,

F. E. LEUPP, *Commissioner.*

The SECRETARY OF THE INTERIOR.

59th Congress
1st Session

Report
No. 1998

SENATE

ALLOTMENT OF LANDS IN SEVERALTY TO CERTAIN INDIANS

MARCH 23, 1906.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 11946]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," report the same and recommend that the same do pass with the following amendments:

On page 3, in line 4, after the word "removed," insert the following "and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent."

On page 3, in lines 8 and 9, strike out the following: "Five Civilized Tribes," and insert in lieu thereof the following: "any Indians in the Indian Territory."

[Balance of Report same as H. Rep. No. 1558, *supra*.]

Act of Feb. 26, 1927

(44 Stat. 1247)

SIXTY-NINTH CONGRESS

SESS. II. CHS. 215 1927.

[1247] CHAP. 215.—An Act To authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States.

Be it enacted by the State and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent of an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.

Approved, February 26, 1927.

CONGRESSIONAL RECORD INDEX

S. 2714

• • • •

S. 2714—

To authorize the cancellation under certain conditions of patents in fee simple to Indians for allotments held in trust by the United States.

Mr. Harreld; Committee on Indian Affairs, 2630.—Reported with an amendment (S. Rept. 536), 6763.—Amended and passed Senate, 7272.—Referred to House Committee on Indian Affairs, 7311.

CONGRESSIONAL RECORD—SENATE

JANUARY 23

• • • •

[2630] By Mr. HARRELD: A bill (S. 2714) to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States;

• • • •

CONGRESSIONAL RECORD—SENATE

[6763] REPORTS OF COMMITTEES

• • • •

Mr. HARRELD also, from the Committee on Indian Affairs, to which was referred the bill (S. 2714) to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States, reported it with an amendment and submitted a report (No. 536) thereon.

• • • •

CONGRESSIONAL RECORD—SENATE

APRIL 10

[7272] CANCELLATION OF CERTAIN PATENTS TO INDIANS

The bill (S. 2714) to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States was considered as in Committee of the Whole. The bill had been reported from the Committee on Indian Affairs with an amendment, on page 1, line 9, after the word "without," to insert the words "the consent or," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

• • • •

CONGRESSIONAL RECORD—HOUSE

* * * *

SENATE BILLS REFERRED

[7311] S. 2714. An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States; to the Committee on Indian Affairs.

* * * *

CONGRESSIONAL RECORD INDEX

S. 2714

* * * *

S. 2714—To authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States.

Reported back (H. Rept. 1896), 2583.—Passed House, 4350.—Examined and signed, 4523, 4566.—Presented to the President, 4641.—Approved [Public, No. 653], 4892.

* * * *

CONGRESSIONAL RECORD—HOUSE

* * * *

[2583] Mr. WILLIAMSON: Committee on Indian Affairs. S. 2714. An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States; without amendment (Rept. No. 1896). Referred to the Committee of the Whole House on the state of the Union.

* * * *

CONGRESSIONAL RECORD—HOUSE

FEBRUARY 21

* * * *

[4350] CANCELLATION OF PATENTS IN FEE SIMPLE TO INDIANS FOR ALLOTMENTS HELD IN TRUST BY UNITED STATES

The next business on the Consent Calendar was the bill (S. 2714) to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States.

The Clerk read the title of the bill.

The SPEAKER: Is there objection to the present consideration of the bill?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.

The bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider the vote by which the bill was passed was laid on the table.

* * * *

CONGRESSIONAL RECORD—SENATE

* * * *

[4523] ENROLLED BILLS AND JOINT RESOLUTION SIGNED

* * * *

S. 2714. An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States;

* * * *

CONGRESSIONAL RECORD—HOUSE

FEBRUARY 23, 1927

* * * *

[4566] ENROLLED BILLS AND JOINT RESOLUTION SIGNED

* * * *

S. 2714. An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States;

* * * *

CONGRESSIONAL RECORD—SENATE

* * * *

[4641] S. 2714. An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States;

* * * *

CONGRESSIONAL RECORD—SENATE

FEBRUARY 26

* * * *

[4892] PRESIDENTIAL APPROVALS

S. 2714. An act to authorize the cancellation, under certain conditions, of patents in fee simple, to Indians for allotments held in trust by the United States; and

* * * *

SENATE

69th Congress
1st Session

Report
No. 536

TO AUTHORIZE THE CANCELLATION, UNDER CERTAIN CONDITIONS, OF PATENTS IN FEE SIMPLE TO INDIANS FOR ALLOTMENTS HELD IN TRUST BY THE UNITED STATES

April 2, 1926.—Ordered to be printed

Mr. HARRELD, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2714]

The Committee on Indian Affairs, to whom was referred the bill (S. 2714) to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States, having considered the same, report favorably thereon, with the recommendation that the bill do pass with the following amendment:

Page 1, line 9, after the word "without," add the words "the consent or."

This is a departmental bill, and the facts are fully set forth in letter from the Secretary of the Interior under date of January 18, 1926, which is attached hereto and made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, January 18, 1926.

Hon. J. W. HARRELD,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR SENATOR HARRELD: Inclosed for your consideration is a draft of a proposed bill to authorize the Secretary of the Interior, under certain conditions, to cancel patents in fee issued to Indians within 25 years from the date of their trust patents, or within any extension, by the President, of such 25-year trust period.

The following is in justification of the requested enactment:

The act of May 8, 1906 (34 Stat. L. 182-183), amending section 6 of the act approved February 8, 1887 (24 Stat. L. 388), provides:

"That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs, at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent."

During the year 1919, and later, the then Secretary caused a great number of patents in fee simple to be issued to adult allottees, or to their heirs of less than one-half Indian blood, without application by the Indians for such patents, believing that such mixed-blood adult Indians were competent and capable of managing their own affairs.

Many of the Indians to whom patents were issued refused to accept them; some of these afterwards accepted the patents unwillingly under the impression that they

would lose the land if they did not take the patents. Some others accepted the patents without protest. Another class, principally of old and ignorant Indians, without understanding the effect of their acts, accepted what the Government offered them.

Practically all these lands have been placed on the tax rolls and some have been sold for nonpayment of assessments.

This department canceled patents issued to two Coeur d'Alene Indians who had refused to accept their patents or to pay taxes, and suit was brought to cancel the assessments. The United States Circuit Court of Appeals, Ninth Circuit, in these two cases, United States *v.* County of Benewah and United States *v.* County of Kootenai, Idaho (290 Fed. 628), held that the Secretary of the Interior had no authority under the act of May 8, 1906, to issue a patent in fee to an Indian allottee during the trust period without an application therefor; that a patent so issued did not pass title, and such patent having been refused, the cancellation of the patent was upheld.

Other undelivered patents issued without application have been canceled, but as there is a question as to whether a patent issued without application is effective, and passes title, when the Indian does not desire such patent, but being unaware of his right to refuse, takes it believing that he must accept for the reason that it has been issued to him by the Government, the department desires legislative authority to cancel such patents where there has been no voluntary sale or encumbrance of the land.

This department is in favor of the issuance of patents in fee to all competent Indians who apply for them; but is not in favor of avoidance of the contracts with allottees to hold their lands in trust for 25 years by causing such Indians unwillingly to accept patents within the trust period, which patents, prima facie, subject the lands to taxation and other liens.

Few of the Indians will or can pay taxes, and the result will be loss of their homes and they will become charges upon the State.

It will be less costly to the Government, to the Indians, and to the States, if this department may, in its discretion, cancel some of these unapplied for and unwillingly accepted patents in fee and thereby prevent the loss of the homes of Indians, especially of the old, the disabled, and those having young unallotted children to support. Enactment of the bill is recommended.

Very truly yours,

HUBERT WORK.

HOUSE OF REPRESENTATIVES

69th Congress
2d Session

Report
No. 1896

CANCELLATION OF PATENTS IN FEE SIMPLE TO INDIANS FOR ALLOTMENTS HELD IN TRUST BY UNITED STATES

JANUARY 29, 1927.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. WILLIAMSON, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2714]

The Committee on Indian Affairs, to whom was referred the bill (S. 2714) to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States, having considered the same, report thereon with a recommendation that it do pass.

The purpose of this bill is apparent from its terms, which are as follows:

That the Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration

of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.

In 1919, the Secretary of the Interior appointed and commissioned Maj. James McLaughlin, in conjunction with the superintendents of the various Indian reservations, to ascertain and list all "competent" Indians upon the various reservations. In determining the competency of the Indians finally listed in an effort made to ascertain the intelligence, educational qualifications, training and capacity of each individual so listed to transact his or her business. In due course a report was submitted to the Secretary of the Interior.

This report appears to have been used as a basis for issuing some 10,000 patents in fee to alloted trust lands during the years 1919 and 1920, to the Indians found "competent" by the investigation. Many of them protested that they did not want their patents in fee on the ground that they would be unable to pay the taxes and as a result would lose their lands. As a matter of fact a large majority of those receiving the patents in fee could not pay the rapidly accruing taxes and were compelled to either mortgage their lands or to dispose of them at whatever figure they could get. About 9,000 of those receiving these "forced patents," as they are called by the Indians, have either lost their lands through foreclosure or tax deed or disposed of them by sale, often at an inadequate price. Even when the price has been adequate, the proceeds have long since disappeared with nothing to show for them upon the reservations or elsewhere.

Under existing law it has been held by the courts that the Indians have a vested right in the tax-free status of

their allotments during the trust period fixed by law, and that such right can not be taken from them without their consent by the device of a forced patent. Placing a voluntary encumbrance upon or disposing of land so patented must in law be considered as an acceptance of the fee patent and a waiver of the tax-exempt privileges of a trust patent, but where forced-patent land has neither been encumbered nor sold by the patentee, such patent ought to be canceled on application made to the Secretary of the Interior. Many Indians under protest accepted their patents and placed them on record in ignorance of their rights in the premises. Such acceptance should not be a bar to cancellation where intervening rights have not accrued.

Taxes, or even tax deeds can not be said to be encumbrances of a character to prevent cancellation as these impositions are not voluntary. Time has not permitted the examination of the statutes of all of the States but as to the States examined provision is made for reimbursement to tax-certificate holders, with interest, in all cases where taxes have been canceled because improperly imposed. All purchasers at tax sale are put upon notice as to any defect in making the tax levy and are not innocent holders for value.

It is believed that no injustice can or will be suffered by anyone as a result of the cancellation of improperly issued patents to Indian trust lands as safeguarded in the bill, and the passage of the measure will in part, at least, remedy a great injustice to a considerable number of Indians.

The bill has the approval of the Secretary of the Interior as appears from the following communication:

[Balance of Report same as S. Rep. No. 536, *supra*.]

Act of Feb. 21, 1931

(46 Stat. 1205)

SEVENTY-FIRST CONGRESS

Sess. III. CHS. 270, 1931

[1205] CHAP. 271.—An Act To amend an Act entitled "An Act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of February 26, 1927 (44 Stat. 1247), authorizing the Secretary of the Interior, under certain conditions, to cancel patents in fee for Indian allotments, be, and the same is hereby, amended by adding thereto the following:

"SEC. 2. Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by the Act of February 8, 1887 (24 Stat. 388), and the amendments thereto, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other

allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided*, That this Act shall not apply where any such lands have been sold [1206] for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after the date of such mortgage or deed, and the period of redemption has expired.

Approved, February 21, 1931.

* * * *

CONGRESSIONAL RECORD INDEX

H.R. 15267

H.R. 15267—

To amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States."

Mr. Leavitt; Committee on Indian Affairs, 910.—Reported with amendment (H. Rept. 2269), 2193).—Debated, 3411.—Amended and passed House, 3413.—Referred to Senate Committee on Indian Affairs, 3429.—Reported back (S. Rept. 1595), 4661.—Passed Senate, 5194.—Examined and signed, 5341, 5389.—Presented to the President, 5578.—Approved [Public, No. 713], 5750.

* * * *

CONGRESSIONAL RECORD—HOUSE

DECEMBER 16

[910] By Mr. LEAVITT: A bill (H. R. 15267) to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States"; to the Committee on Indian Affairs.

* * * *

[2193]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

* * * *

Mr. WILLIAMSON: Committee on Indian Affairs. H. R. 15267. A bill to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States"; with amendment (Rept. No. 2269). Referred to the House Calendar.

* * * *

[3411] JANUARY 28

CANCELLATION OF PATENTS IN FEE SIMPLE TO INDIANS

Mr. LEAVITT. Mr. Speaker, I call up the bill (H. R. 15267) to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States." This bill is on the House Calendar.

The SPEAKER. The gentleman from Montana calls up a bill which the Clerk will report.

The Clerk read the bill, as follows:

Be it enacted, etc., That the act of February 26, 1927 (44 Stat. 1247), authorizing the Secretary of the Interior, under certain conditions, to cancel patents in fee for Indian allotments, be, and the same is hereby, amended by adding thereto the following:

"SEC. 2. Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or part thereof and such mortgages have been satisfied, such

lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, are hereby declared to be held in trust by the United States for a period of 25 years from the date of this act for the benefit of the allottee or his Indian heirs; and the Secretary of the Interior may, in his discretion, cancel such fee patents so far as they cover lands undisposed of and unincumbered by the patentees or Indian heirs, and cause new trust patents to be issued for such lands, to the allottees or their Indian heirs, of the form and legal effect as provided by the act of February 8, 1887 (24 Stat. 388), and the amendments thereto, such patents to be effective from the date of this act: *Provided*, That this act shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed exe- [3412] cuted by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired."

With the following committee amendment:

On page 2, line 6, the word "heirs," strike out all down to and including the word "act," in line 16, and insert: "may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by the act of February 8, 1887 (24 Stat. 388), and the amendments thereto, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued."

Mr. STAFFORD. I think the gentleman should make some explanations of this bill.

Mr. LEAVITT. I will state that the gentleman from South Dakota [Mr. WILLIAMSON] has made a special study of this matter, and I will ask him to make the explanation. Mr. Speaker, I yield 10 minutes to the gentleman from South Dakota [Mr. WILLIAMSON].

Mr. WILLIAMSON. Mr. Speaker and gentlemen of the House, along in 1915 the Secretary of the Interior appointed what was known as a competency commission. This commission was sent out to the various reservations throughout the United States to investigate the competency of Indians upon these reservations. They reported to the Secretary of the Interior that among those who had trust patents there were at least 10,000 Indians who were competent to handle and transact their own business. As a result of that, Secretary Lane issued in the neighborhood of 10,000 fee-simple patents to trust patent lands. These were issued without the application and without the consent of the Indians. Many of these patents were issued while the owners were over in France as a part of our forces there. They knew nothing about the issuance of the patents until they returned to this country, when in many cases they found their lands had been patented and assessed and that taxes had accumulated. As a result of this unauthorized action of the Government, many found themselves obliged either to mortgage or dispose of their property in order to meet the tax levies and to prevent their lands from being sold for taxes. Out of the whole number of approximately 10,000 tracts covered by these fee patents the Indians to-day have less than 1,000 left. The lands have either been lost by being mortgaged or have been sold, and very frequently sold for a very inadequate consideration.

When I came to Congress about 10 years ago I took the position that these patents were illegally issued, and succeeded in convincing Secretary Fall that the patents were invalid and that he had a right to cancel all fee patents on unencumbered land upon application of the owner.

During the time he was in office he canceled a number of these patents, but when Doctor Work came in as Secretary of the Interior he said he did not think the Secretary ought to cancel these patents without specific authority of law and refused to act. To meet this situation Congress three years ago passed a bill which authorize the Secretary of the Interior to cancel patents issued without the consent of the Indians upon application of the Indians in those cases where the lands have neither been mortgaged nor sold.

Under the construction given to the act it was not possible to restore the unemcumbered portion of lands for which a fee simple patent had been issued if any part of the land covered by the patent had been mortgaged or sold. The result was that those Indians who had either mortgaged or sold a part of their "forced" patent land in order to meet taxes levied against the whole could get no relief as to the part remaining unemcumbered. There are a number of cases where these lands have been mortgaged and the mortgages later paid off.

This bill authorizes the Secretary of the Interior to restore the trust-patent status of such portions of land as still remain unsold or unencumbered, and to this is added lands that may have been mortgaged where such mortgage has been paid.

Mr. STAFFORD. Can the gentleman explain what will accrue to the Indian by virtue of this proposed law?

Mr. WILLIAMSON. It will mean this: There are still a few hundred tracts of land for which patents in fee have been issued without the consent of the holders of the trust patents, and if this bill is passed it will enable the Secretary of the Interior, upon the application of these Indians, to cancel the patents in fee to such of their lands as are unencumbered. This will have the effect of restoring their trust-patent status. In other words, this will mean that the lands will no longer be subject to taxation or any other kind of encumbrance, and the Indian will then be able to hold the lands without paying taxes until

the 25-year period of the trust patent has either expired or the extension has expired.

Mr. STAFFORD. Do I understand the gentleman is favorable to the policy of withdrawing the lands from taxation for State purposes?

Mr. WILLIAMSON. I am not particularly favorable to that policy, but that is not the point here at all. The point is these forced fee simple patents were illegally issued. The courts have so held, and the Indians have the undoubted right to have the lands involved restored as trust property. The courts have also held that the Indian has a vested right to the tax-free status of his land; that this is a right he is entitled to insist upon and one that no one has the right to take away from him. As a matter of fact, the Government has taken it away from him, and all we are seeking to do is to restore the land to the status it would have had if no patent in fee had ever been issued.

Mr. STAFFORD. I wish to direct the attention of the gentleman to the clause in the amendment found in lines 24 and 25, page 2, "such patents to be effective from the date of the original trust patents," and ask his interpretation of it. What would be accomplished by that retroactive clause?

Mr. WILLIAMSON. These trust patents carried a clause, which is a part of the law authorizing the trust patent, providing that they shall remain in force for a period of 25 years from the time they were issued. So if these patents are restored they would become effective from the date of the trust patent that was superceded by a patent in fee; in other words, restores them to the status they had before the fee patent was issued. In some cases the 25-year period has been extended either by law or by Executive order, and in those cases the new patents would extend for the 25 years plus any period of extension that may have been granted. In other words, the bill will place the lands in the same condition they would have been if no patent in fee had ever been issued.

Mr. STAFFORD. Will there be any question of taxation involved by virtue of this retroactive feature?

Mr. WILLIAMSON. In many cases, there will be. In some cases there will be trust patents for which patents in fee have been issued and the land, of course, has gone on the assessment rolls and taxes have been paid. That is true in some of the cases where the fee patent has already been canceled. In those cases, under the laws of nearly all the States, the Indian has his recourse by making application to the board of county commissioners for return of the taxes paid. In most cases such taxes have been returned by such boards where application has been filed with the proper showing.

Mr. STAFFORD. It is not proposed to have the national Government reimburse the Indians for the taxes they have paid?

Mr. WILLIAMSON. No; the National Government is not involved in any way. They will have to go for reimbursement to the boards of county commissioners in the counties where the lands are located.

Mr. STAFFORD. And the gentleman states it is the policy of the local tax units to return the taxes after they have been paid?

Mr. WILLIAMSON. I am not familiar with what is being done in other States, but in South Dakota, in every case that has come to my attention where such application has [3413] been filed by an Indian, whose land has been restored to a trust patent status, the boards have restored the taxes to the Indian.

Mr. STAFFORD. To how many cases will this bill apply?

Mr. WILLIAMSON. It is difficult to say how many are remaining. We could not get this information from the Secretary of the Interior in time to put it in this report; but when I made a report on a former bill, about three years ago, there were then remaining approximately 1,000 of these tracts, and my understanding is, from the

information we now have, that there are only between 300 and 400 such tracts of land involved in the United States.

Mr. MORTON D. HULL. Will the gentleman yield?

Mr. WILLIAMSON. Yes.

Mr. MORTON D. HULL. What is the status of the other land that has been alienated, and so forth?

Mr. WILLIAMSON. The land that has been patented and that has either been encumbered or sold by the Indian can not be reached. Nothing can be done in those cases, because, if a man mortgages or if he deeds, that is equivalent to an acceptance of the patent and, so far as that land is concerned, the Indian is without recourse.

Mr. MORTON D. HULL. There is no hope of any restoration, so far as that land is concerned.

Mr. WILLIAMSON. Absolutely none.

The SPEAKER. The question is on the committee amendment.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. LEAVITT, a motion to reconsider the vote by which the bill was passed was laid on the table.

* * * *

REFERRED TO COMMITTEE

* * * *

CONGRESSIONAL RECORD—SENATE

* * * *

[3429] H.R. 15267. An act to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States"; and . . .

* * * *

BILLS REPORTED BACK

* * * *

[4661] H.R. 15267. An act to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States (Rept. No. 1595).

* * * *

FEBRUARY 17

[5194]

CANCELLATION OF FEE SIMPLE PATENTS TO INDIANS

The bill (H. R. 15267) to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States" was considered by the Senate, and was read, as follows:

Be it enacted, etc., That the act of February 26, 1927 (44 Stat. 1247), authorizing the Secretary of the Interior, under certain conditions, to cancel patents in fee for Indian allotments, be, and the same is hereby, amended by adding thereto the following:

"SEC. 2. Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without encumbrance by the patentees, or Indian heirs, may be given a trust patent status, and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of

the form and legal effect as provided by the act of February 8, 1987 (24 Stat. 388), and the amendments thereto, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided*, That this act shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired."

Mr. BRATTON. Mr. President, will the Senator from North Dakota explain this measure?

Mr. FRAZIER. Mr. President, some months ago a bill was passed authorizing the department to make some investigations of what are known as trust patents that had been issued to Indians, sometimes over their protest; and a good many complaints have come in. An investigation was made. On page 4 of the report a list is given of the questions that were sent out. These questions were answered, and investigations were made by the superintendents of the various reservations.

[5195] The department recommends the passage of this bill. Personally, I do not feel that the bill is as strong as it should be; but it is a step in the right direction, and I believe it should be passed.

Mr. BRATTON. What does it do?

Mr. FRAZIER. In cases where patents in fee have been issued to Indians over their protest, where they still have the land, the patent in fee is set aside, and a trust patent is given to the Indians under authority given to the Secretary of the Interior to take that action.

Mr. BRATTON. Do I understand that upon a review of the facts the Secretary of the Interior may set aside a restricted patent and issue an unrestricted one?

Mr. FRAZIER. That is the case, but only in places where these patents in fee have been issued, as I understand, over the protest of the Indians.

Mr. BRATTON. No land could be taken from an Indian under this bill?

Mr. FRAZIER. Oh, no! It is really for the benefit of the Indians.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill was read the third time, and passed.

• • • •

CONGRESSIONAL RECORD—HOUSE

• • • •

[5341] H.R. 15267. An act to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States;

• • • •

CONGRESSIONAL RECORD—SENATE

• • • •

[5389] H.R. 15267. An act to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States";

• • • •

CONGRESSIONAL RECORD—HOUSE

FEBRUARY 20

• • • •

PRESENTED TO PRESIDENT

[5578] H.R. 15267. An act to amend an act entitled "An act to authorize the cancellation under certain conditions of patents in fee simple to Indians for allotments held in trust by the United States;

• • • •

FEBRUARY 23

* * * *

MESSAGE FROM THE PRESIDENT

[5750] Sundry messages in writing from the President of the United States were communicated to the House by Mr. Latta, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills of the House of the following titles:

* * * *

H.R. 15267. An act to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States."

* * * *

HOUSE OF REPRESENTATIVES

71st Congress
3d Session

Report
No. 2269

CANCELLATION OF CERTAIN FEE SIMPLE PATENTS ISSUED TO INDIANS FOR ALLOTMENTS WITHOUT THEIR CONSENT

JANUARY 14, 1931.—Referred to the House Calendar and ordered to be printed

Mr. WILLIAMSON, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 15267]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 15267) to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States," having considered the same, report thereon with the recommendation that it do pass with an amendment as follows:

On page 2, line 6, strike out all after the word "heirs"; all of lines 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 to and including the word "act"; and insert in lieu thereof the following:

may be given a trust patent and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to

cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by the act of February 8, 1887 (24 Stats. 388), and the amendments thereto, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued:

So that the bill, as amended, will read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of February 26, 1927 (44 Stat. 1247), authorizing the Secretary of the Interior, under certain conditions, to cancel patents in fee for Indian allotments, be, and the same is hereby, amended by adding thereto the following:

"SEC. 2. Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without encumbrance by the patentees, or Indian heirs, may be given a trust-patent status, and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by the act of February 8, 1887 (24 Stats. 388), and the amendments thereto, such patents to be effective from the date of the original trust patents, and the land shall be subject to

any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided*, That this act shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired."

The bill as originally transmitted by the department provided that the lands intended to be covered by the bill—

are hereby declared to be held in trust by the United States for a period of twenty-five years from the date of this act for the benefit of the allottee or his Indian heirs.

As there would be no way of identifying the lands to which this provision would apply it would have the result of clouding the title to all allotted trust-patent lands upon which a patent in fee had later been issued.

Your committee also thought it inadvisable to give the lands so restored a different status from that which they would have had had no patent in fee ever been issued. It will be observed by the terms of the amendment no title will be affected until the Secretary of the Interior has been taken affirmative action by canceling the illegally issued patent in fee and in lieu thereof substituted a trust patent, and that when this has been done the lands will have the same status as they would have had if no patent in fee had ever been issued.

In 1915, the Secretary of the Interior appointed and commissioned Maj. James McLaughlin, in conjunction with the superintendents of the various Indian reservations, to ascertain and list all "competent" Indians upon the various reservations. In determining the competency of the Indians finally listed an effort was made to ascer-

tain the intelligence, educational qualifications, training, and capacity of each individual so listed to transact his or her business. In due course a report was submitted to the Secretary of the Interior.

This report appears to have been used as a basis for issuing some 10,000 patents in fee to allotted trust lands during the years 1919 and 1920, to the Indians found "competent" by the investigation. Many of them protested that they did not want their patents in fee on the ground that they would be unable to pay the taxes and as a result would lose their lands. As a matter of fact a large majority of those receiving the patents in fee could not pay the rapidly accruing taxes and were compelled to either mortgage their lands or to dispose of them at whatever figure they could get. About 9,000 of those receiving these "forced patents," as they are called by the Indians, have either lost their lands through foreclosure or tax deed or disposed of them by sale, often at an inadequate price. Even when the price has been adequate, the proceeds have long since disappeared with nothing to show for them upon the reservations or elsewhere.

Under the law as it existed at the time the fee simple patents complained of were issued it has been held by the courts tha. the Indians have a vested right in the tax-free status of their allotments during the trust period fixed by law, and that such right can not be taken from them without their consent by the device of a forced patent. Placing a voluntary encumbrance upon or disposing of land so patented must in law be considered as an acceptance of the fee patent and a waiver of the tax-exempt privileges of a trust patent, but where forced-patent land has neither been encumbered nor sold by the patentee, such patent ought to be canceled on application made to the Secretary of the Interior. Many Indians under protest accepted their patents and placed them on record in ignorance of their rights in the premises. Such acceptance should not be a bar to cancellation where intervening rights have not accrued.

Taxes, or even tax deeds can not be said to be encumbrances of a character to prevent cancellation as these impositions are not voluntary. Time has not permitted the examination of the statutes of all of the States but as to the States examined provision is made for reimbursement to tax-certificate holders, with interest, in all cases where taxes have been canceled because improperly imposed. All purchasers at tax sale are put upon notice as to any defect in making the tax levy and are not innocent holders for value.

Congress, mindful of the injustice and wrong which had been suffered by many of the Indians to whom patents in fee were issued without their application or consent, passed the act of February 26, 1927, by which it authorized the Secretary of the Interior to cancel patents in fee in proper cases where the land covered by the illegally issued patent in fee had been neither mortgaged or sold. Your committee was of the opinion that where land covered by such illegally issued patent had been either mortgaged or sold by the Indian to whom the patent was issued, that such mortgage or sale, as the case might be, would amount to an acceptance of the patent and that he could not be heard to say that such patent had been improperly issued.

It will be observed that this bill goes farther than said act of February 26, 1927, in that it permits such portions of lands for which a patent in fee had been issued without the consent of the grantee which still remained unencumbered and which have not been conveyed to be restored to their trust patent status.

The bill as amended also permits the Secretary of the Interior to cancel patents in fee and restore the trust-patent status of the lands involved in cases where such lands have been mortgaged where such mortgage has been discharged, except in those cases where the lands may have been sold for unpaid taxes assessed after the date of the encumbrance.

The bill is sponsored by the Secretary of the Interior as appears from the following communication:

DEPARTMENT OF THE INTERIOR,
Washington, December 13, 1930.

Hon. SCOTT LEAVITT,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. LEAVITT: Inclosed for your consideration is a draft of a proposed bill to amend the act of February 26, 1927 (44 Stat. 1247), entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States."

By this act the Secretary of the Interior was authorized, in his discretion, "to cancel any patents in fee simple, issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extention of such period of trust by the President, where such patent was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent."

Before the passage of this act a number of undelivered patents in fee so issued were canceled by the department and in the cases of United States *v.* Kootenai County and United States *v.* Benewah County, Idaho (290 Fed. 628), the United States Court of Appeals, Ninth Circuit, upheld the cancellations and declared that the patents, which the Indians had refused to accept, did not pass title, and taxes assessed against the lands were declared void.

Following this, a number of other undelivered patents were canceled, where no mortgage or deed to the land or any part thereof, executed by the patentee or heirs, appeared of record. There were, however, many Indians who had receipted for their patents, who claimed that their acceptance was not voluntary. There being a doubt as to the effect of physical delivery of a patent, with or without protest from the patentee, this department submitted the draft of a bill, and recommended its enactment. This became the above-mentioned act of February 26, 1927.

Before and since the approval of the act of 1927, nearly 300 patents have been canceled; but none where the allottee or his heirs had mortgaged or sold all or any part of the allotment. This number is small in comparison with the many patents in fee issued without authority of law during the four years preceding the patents in fee issued without authority of law during the four years preceding the year 1920.

On April 2, 1928 (calendar day, April 3), the following bill was introduced in the Senate, Seventieth Congress, first session: "A bill (S. 3879) to create a commission to investigate the issuance of fee simple patents to Indians not applying therefor, and for other purposes."

A similar bill, H.R. 12663, was introduced on April 3, 1928.

In its letter of May 16, 1928, to the chairman of the Senate Committee on Indian Affairs, and of May 21, 1928, to the chairman of the Committee on Indian Affairs, House of Representatives, the department said, in part, in each case:

"Much of the information to be obtained by the proposed commission aided by existing governmental agencies and bureaus is of record in this department and at the various Indian agencies, and the additional data required to complete each case will be obtained to the fullest extent possible through instructions to field officers of the Indian Service.

"When these reports are received and studied, this department would then be in a position to consider the question of recommending such legislation as may be thought advisable to give relief where needed.

"It is therefore recommended that no action be taken on the present bill."

On June 21, 1928, all superintendents were instructed to procure information which would enable the Government to devise some plan for the welfare of the Indians. Following is a list of the questions contained in the letter of instructions, the answers to which were to be supported by evidence procured after careful investigation:

1. Number of allotment and date of fee patent.

2. Date and manner of delivery of patent, and was it receipted for?

3. If accepted, was such acceptance with or without protest, and was it filed for record in the county? If so, when and by whom?

4. Has the land covered by the patent, or any part of it, been sold or mortgaged by the patentee or by his or her heirs in case of decease?

5. If mortgaged, has such mortgage been released or foreclosed, and has date of redemption expired?

6. If land has been sold by patentee or heirs, what was received for it and was it a fair consideration, paid then, or was it in settleemnt of an old debt?

7. Has any of the land been sold for debt or taxes? (Give particulars.)

8. Has patent been canceled?

9. If canceled, have tax assessments or tax sales been canceled, or paid assessments refunded?

10. What is the present age, mental, physical, and financial condition of the patentee or heirs, if now deceased?

11. What is the source of the Indian's support, and has the Government or the State or county contributed to such support and if so, to what extent?

12. What persons are dependent upon the Indian for support?

13. If the Indian appears to have been defrauded of his property, give particulars, and names and addresses of the persons involved, and if possible their financial standing.

The reports received are not complete, but sufficiently so to show that a large number of Indians have lost their lands through foreclosure of mortgages, or have sold the lands for an inadequate consideration, and in some cases lands have been sold for unpaid tax assessments, made after an Indian had mortgaged or sold some part of his land, and tax certificates or tax deeds issued.

In some cases Indians have sold all their lands, in some a part only, and some mortgages have been satisfied.

There are many cases in which the patentees or their heirs have sold part of their lands and hold the remaining lands, unincumbered by mortgage, any mortgage on all or part of the lands having been satisfied.

If Congress should declare all the lands covered by erroneously issued patents to be held in trust by the United States, where part or all of an allotment remains unsold, and free from mortgage, the number of claims by Indians for redress would be very greatly lessened. Without legislation it will not be long before those who still own lands will lose them.

The attached draft of a proposed bill to amend the act of 1927, will, if enacted, restore the trust on lands in-

cluded in these irregularly issued fee patents, which lands have not been sold by patentees of their Indian heirs, and where any mortgage or all or part of the lands, has been satisfied, but where such lands have been sold for taxes legally assessed, or sold in execution of a judgment for debt incurred after date of a mortgage or deed executed by the allottee or his Indian heirs, and the period of redemption from sale has expired, the act would not apply.

The object in having the reimposed trust take effect from the date of the act is to prevent any further sales or mortgages or tax assessments after a given date. It would take sometime before the department could find the facts in each case which would bring it within the provisions of the act, and to enable the department to cancel the fee patents and cause new patents to be issued, as provided in the proposed bill.

Enactment of a bill, as proposed, is recommended.

Very truly yours,

RAY LYMAN WILBUR.

ACT AMENDED

The act of February 26, 1927 (44 Stat. 1247), which is amended by adding thereto an additional section, reads as follows:

[That the Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.]

SENATE

71st Congress
3d Session

Report
No. 1595

CANCELLATION OF CERTAIN PATENTS IN FEE SIMPLE ISSUED TO INDIANS FOR ALLOTMENTS WITHOUT THEIR CONSENT

JANUARY 26 (calendar day, FEBRUARY 12), 1931.—
Ordered to be printed

Mr. FRAZIER, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 15267]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 15267), to amend an act entitled "An act to authorize the cancellation, under certain conditions, of patents in fee simple to Indians for allotments held in trust by the United States," having considered the same, report favorably thereon with a recommendation that the bill do pass without amendment.

The facts are fully set forth in the report of the House Committee on Indian Affairs (H. Rept. No. 2269, 71st Cong., 3d sess.), which is appended hereto and made a part of this report.

[Balance of Report same as H. Rep. 2269, *supra*.]

Act of June 11, 1940
(54 Stat. 298).

AN ACT

[CHAPTER 315]

For the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees and Indian heirs of allottees for all taxes paid on so much of their allotted lands as, having been patented in fee prior to the expiration of the period of trust, without application by or consent of the patentee, has been or may be restored to trust status through cancelation of the fee patent by the Secretary of the Interior: *Provided*, That in any case in which a claim against a State, county, or political subdivision thereof for taxes collected upon such lands while the patent in fee was outstanding has been reduced to judgment, and such judgment remains unsatisfied, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes, including penalties and interest, paid thereon, and upon payment by the State, county, or political subdivision thereof of the costs of the suit, to cause such judgment to be released: *Provided further*, That in any case in which a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to re-

imburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation.

SEC. 2. There is hereby authorized to be appropriated the sum of $75,000, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this Act.

Any appropriations made pursuant to this section shall remain available until expended.

Approved, June 11, 1940.

CONGRESSIONAL RECORD INDEX

H.R. 952

• • • •

H.R. 952—

For the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid.

Mr. Case of South Dakota; Committee on Indian Affairs, 34.—Reported back (H.Rept. 669), 5932.

• • • •

CONGRESSIONAL RECORD—HOUSE

JANUARY 3

• • • •

[34] H.R. 952. A bill for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid; to the Committee on Indian Affairs.

• • • •

MAY 22

• • • •

[5932] REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. MUNDT: Committee on Indian Affairs. H.R. 952. A bill for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid; without amendment (Rept. No. 669). Referred to the Committee of the Whole House on the state of the Union.

• • • •

CONGRESSIONAL RECORD INDEX

• • • •

H.R. 952—

For the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid.

Debated, 1628.—Passed House, 3007.—Referred to Senate Committee on Indian Affairs, 3037.—Reported back (S. Rept. 1488), 4942.—Passed Senate, 6988.—Examined and signed, 7251, 7258.—Presented to the President, 7347.—Approved [Public, No. 590], 8258.

• • • •

CONGRESSIONAL RECORD—HOUSE

FEBRUARY 19

• • • •

[1628] RELIEF OF INDIANS WHO HAVE PAID TAXES ON ALLOTTED LANDS

Mr. CHURCH. Mr. Speaker, I ask unanimous consent that the proceedings by which the bill (H.R. 952) for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid, was stricken from the calendar this morning, be vacated.

Mr. FADDIS. Reserving the right to object, Mr. Speaker, what bill is this?

Mr. CHURCH: The bill is H.R. 952.

Mr. CASE of South Dakota. Mr. Speaker, I further reserve the right to object for the purpose of making an explanation. This is the bill which the gentleman from Missouri [Mr. COCHRAN] asked to have go over without prejudice. The gentleman from North Dakota [Mr. BURDICK] objected to that request, whereupon there were three objections to the consideration of the bill through some misunderstanding. I have spoken to the gentleman from Missouri and also to the gentleman from North Dakota and it is agreeable to them that the bill be restored to the calendar and then be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Illinois [Mr. CHURCH]?

There was no objection.

Mr. CHURCH. Mr. Speaker, I ask unanimous consent that the bill (H.R. 952) be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

* * * *

[3007] RELIEF OF INDIANS WHO HAVE PAID TAXES ON ALLOTTED LANDS

The Clerk called the next bill, H.R. 952, for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottee and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized, under such rules and regulations as may prescribe, to reimburse Indian allottees and Indian heirs of allottees for all taxes paid on so much of their allotted lands as, having been patented in fee prior to the expiration of the period of trust, without application by or consent of the patentee, has been or may be restored to trust status through cancelation of the fee patent by the Secretary of the Interior: *Provided*, That in any case in which a claim against a State, county, or political subdivision thereof for taxes collected upon such lands while the patent in fee was outstanding has been reduced to judgment, and such judgment remains unsatisfied, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes, including penalties and interest, paid thereon, and upon payment by the State, county, or political subdivision thereof of the costs of the suit, to cause such judgment to be released: *Provided further*, That in any case in which such a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to reimburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation.

SEC. 2. There is hereby authorized to be appropriated the sum of $75,000, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act.

Any appropriations made pursuant to this section shall remain available until expended.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

* * * *

CONGRESSIONAL RECORD—SENATE

* * * *

[3037] HOUSE BILLS AND JOINT RESOLUTION REFERRED

* * * *

H.R. 952. An act for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid;

* * * *

[4942] REPORTS OF COMMITTEES

* * * *

Mr. BULOW, from the Committee on Indian Affairs, to which was referred the bill (H.R. 952) for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid, reported it without amendment and submitted a report (No. 1488) thereon.

* * * *

MAY 28

[6988] RELIEF OF INDIANS WHO HAVE PAID TAXES ON ALLOTTED LANDS

The bill (H.R. 952) for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid, was considered, ordered to a third reading, read the third time, and passed.

* * * *

CONGRESSIONAL RECORD—HOUSE

* * * *

[7251] ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

* * * *

H.R. 952. An act for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid;

* * * *

CONGRESSIONAL RECORD—SENATE

MAY 31

* * * *

BILLS EXAMINED AND SIGNED

[7258] H.R. 952. An act for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid;

* * * *

CONGRESSIONAL RECORD—HOUSE

* * * *

[7347] BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

* * * *

H.R. 952. An act for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid;

* * * *

CONGRESSIONAL RECORD—HOUSE

JUNE 14

* * * *

[8258] MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Latta, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

* * * *

H.R. 952. An act for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid;

* * * *

HOUSE OF REPRESENTATIVES

76th Congress
1st Session

Report
No. 669

RELIEF OF INDIANS WHO HAVE PAID TAXES ON ALLOTTED LANDS

MAY 22, 1939.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. MUNDT, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 952]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 952) for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottes and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid, having considered the same, report favorably thereon without amendemnt and recommend that the bill do pass.

This legislation seeks to correct—

an unfortunate situation growing out of an erroneous interpretation by this Department of the provisions of the act of May 8, 1906 (34 Stat. 182) (Secretary of the Interior, March 17 1938)—

under which patents on land allotments were issued to certain Indians without their application during the years 1917 to 1920 and prior to the expiration of their trust periods.

Lands so patented naturally were taxed until the trust status was restored. Many Indians, to keep their lands from being sold for taxes, paid the taxes logically levied by various taxing authorities and thence distributed to sundry and various public bodies. The length of time elapsed and the varying amounts involved for different annual levies to different and varying public bodies make it impractical to seek return of the money by the sundry and various bodies who ultimately received varying portions of the taxes paid. The costs would in many cases exceed the amounts involved and innocent parties would have the costs to pay.

The levy and collection of taxes was a duty imposed upon local units of government by statutory law and the bonds of their officials. This was not their error. The error was by the United States Government.

Clearly the local authorities were not at fault for taxing such land while patents in fee were outstanding (Secretary of the Interior, March 17, 1938).

The first legislative approach to a solution of this problem was the introduction in the Seventy-fourth and Seventy-fifth Congresses of bills to authorize $100,000 to examine the records in counties west of the Mississippi River to determine the status of each forced patent. That legislation met the objection that the cost would exceed the amount estimated to be involved. The second approach was the introduction of a bill to grant direct relief to claimants and counties against whom judgments were taken in one State (South Dakota). In reporting to the Claims Committee on that bill in the Seventy-fifth Congress the Secretary of the Interior suggested that the relief sought was of course a question for the considera-

tion of Congress, but that if enacted it should provide for general legislation to meet the situation in the several States involved.

The text of such an amendment is identical with the language of and constitutes the entire wording of the bill now reported, H.R. 952. A similar bill was introduced following that recommendation in the Seventy-fifth Congress (H.R. 10644), and favorably reported by this committee June 9, 1938, shortly before that Congress adjourned.

In suggesting the amendment the Secretary of the Interior said:

The $75,000 authorized to be appropriated by the bill as amended would be sufficient to take care of all those cases in which judgments have been rendered and those now pending in the courts. It would also leave a balance to reimburse those Indians whose patents in fee may be canceled in future years (report on H.R. 6393, March 17, 1938).

It will be noted that this is less than was first proposed for an examination alone, and indicates that the present approach is the logical one to adopt. It is to be noted that no court costs are to be reimbursed and no attorney's fees are involved. The reduction of the claims to judgments, where done, has been done by district attorneys of the United States. The legislation makes further court costs unnecessary.

The reports on the three bills cited, follow (first on H.R. 952 now pending; second on H.R. 10644, the identical bill in the 75th Cong.; third, the report on H.R. 6393 in the 75th Cong., in which the Secretary of the Interior proposed the wording of the bill herewith recommended for passage):

[Reports on H.R. 952]

DEPARTMENT OF THE INTERIOR,
Washington, April 26, 1939.

Hon. WILL ROGERS,
Chairman Committee on Indian Affairs
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for a report on H.R. 952, a bill for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid.

The unfortunate situation now before us grew out of an erroneous interpretation by this Department of certain provisions in the act of May 8, 1906 (34 Stat. 182), authorizing the Secretary of the Interior, in his discretion, to issue fee-simple patents to Indian allottees whenever he shall find such allottees capable of managing their own affairs. Under this authority it was thought that no application for a patent in fee by the allottee was required, and during the years 1917 to 1920, inclusive, approximately 10,000 fee patents were issued to adult Indian allottees upon the recommendations of competency commissions appointed to ascertain the competency of the allottees. In most of such instances patents were issued without application by or consent of the patentees.

Taxes were levied by the various counties against the lands of the Indians thus receiving these "forced" fee patents. Many of the Indians paid the assessments, on pain of losing their homes, while the lands of others, being unable to pay, were sold for the delinquent assessments.

The action of this Department in issuing fee patents without application from the Indian owners was subse-

quently held to have been without authority in *United States* v. *Benewah County* and *United States* v. *County of Kootenai, Idaho* (290 Fed. 628), it being also held that patents so issued did not convey the legal title and that the lands were not subject to taxation during the years the invalid patents were outstanding.

Many of the fee patents erroneously so issued have since been canceled under authority of the act of February 26, 1927 (44 Stat. 1247), as amended by the act of February 21, 1931 (46 Stat. 1205). Suits have been instituted against the counties refusing to refund the taxes paid by the Indians or refusing to cancel the delinquent tax assessments and tax sales to third parties. Judgments, aggregating approximately $25,000, exclusive of costs, have been obtained against a number of counties.

Clearly the local authorities were not at fault for taxing these lands while such fee patents were outstanding. Whether reimbursement should not be made by the Federal Government to the counties involved for all judgments paid by them is a serious question of policy for determination by the Congress.

If H.R. 952 is to be given favorable consideration by the Congress, it is deemed proper to add that the text is identical with that of H.R. 10644 on which a report was submitted to your committee on June 8, 1938, and is identical with the text suggested by this Department in its report dated March 17, 1938, on H.R. 6393, Seventy-fifth Congress.

The Acting Director of the Bureau of the Budget has advised that this proposed legislation would not be in accord with the program of the President.

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

GENERAL ACCOUNTING OFFICE,
Washington, March 21, 1939.

Hon. WILL ROGERS,
Chairman, Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. CHAIRMAN: Your letter of February 27, 1939, acknowledged February 28, requests a report on H.R. 952, entitled "A bill for the relief of Indians who have paid taxes on alloted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid."

The bill provides: "That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees and Indian heirs of allottees for all taxes paid on so much of their allotted lands as, having been patented in fee prior to the expiration of the period of trust, without application by or consent of the patentee, has been or may be restored to trust status through cancelation of the fee patent by the Secretary of the Interior: *Provided*, That in any case in which a claim against a State, county, or political subdivision thereof for taxes collected upon such lands while the patent in fee was outstanding has been reduced to judgment, and such judgment remains unsatisfied, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes, including penalties and interest, paid thereon, and upon payment by the State, county, or political subdivision thereof of the costs of the suit, to cause such judgment to be released: *Provided further*, That in any case in which such a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to reimburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation.

"SEC. 2. There is hereby authorized to be appropriated the sum of $75,000 or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this Act.

"Any appropriations made pursuant to this section shall remain available until expended."

This Office has no information as to the merits of the proposed legislation and as to the bill does not contain anything affecting the jurisdiction or functions of this Office I have no suggestion or recommendation to make with respect thereto.

Sincerly yours,

R. N. ELLIOTT,
Acting Comptroller General of the United States.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., May 6, 1939.

Hon. WILL ROGERS,
Chairman, Committee on Indian Affairs,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: I desire to invite your attention to H.R. 952, which proposes to authorize the appropriation of $75,000, or so much thereof as may be necessary, to reimburse Indian allottees and Indian heirs of allottees for all taxes paid on so much of their allotted lands as, having been patented in fee prior to the expiration of the period of trust, without application by or consent of the patentee, have been or may be restored to trust status through cancelation of the fee patent by

the Secretary of the Interior. In cases in which claims against States, counties, or other political subdivisions for taxes collected upon such lands have been reduced to judgment and such judgments are unsatisfied, the Secretary would be authorized to cause such judgments to be released upon payment of costs by the State or county. If any such judgment has been satisfied, the Secretary would be authorized to reimburse the State, county, or political subdivision for the actual amount of the judgment, exclusive of the costs of litigation.

The obvious purposes of this bill are to compensate Indian allottees for taxes erroneously collected from them and to relieve the political subdivision of States of the burden of making restitution in such cases. Whether either of these purposes would be accompanied by the enactment of the bill depends upon the decision to be rendered by the Supreme Court in the case of *Board of Com'rs of Jackson County, Kans.* v. *United States* (100 F.(2d) 929), now pending on writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit. Review is being sought solely on the question of whether the lower court correctly awarded, as a part of the recovery allowed, interest on the amounts paid as taxes by the Indians. This is a question of importance on which a conflict now exists. (Cf. *Board of Com'rs of Tulsa County, Okla.* v. *United States* (C.C.A. 10), 94 F.(2d) 430, and *United States* v. *Nez Perce County, Idaho* (C.C.A. 9), 95 F.(2d) 232, 95 F.(2d) 235). For this reason the Government has not opposed the petition for writ of certiorari. The case will not be reached during the present term.

The reimbursement proposed by H.R. 952 merely covers the amounts actually paid by the Indians as taxes and does not include interest thereon. If the Supreme Court should hold in the *Jackson County* case that the court below erred in awarding interest, the bill in its present form would appear to be unobjectionable. On the other

hand, should the circuit court of appeals be upheld in the allowance of interest, the rights of the Indian allottees to be benefited by the bill would be substantially affected. In cases in which the claims for taxes paid have not been reduced to judgment, the reimbursement to be authorized would discharge the political subdivisions from the liability to refund the taxes, but it would not extinguish the liability for interest and would not adequately compensate the Indians. In cases in which the claims have been reduced to judgments which include interest, the release of the judgments would deprive the Indians of their right to the interest which was or should have been awarded in the suits instituted for their benefit. Furthermore, should the bill be passed and the judgment in the *Jackson County case* be released before that case has been heard by the Supreme Court, proceedings in that Court would, of course, be terminated, in which event the Indians there involved would lose the interest awarded by the lower court, and the question as to whether or not the political subdivisions are liable for interest in such cases would have to be determined in an entirely new suit.

For the foregoing reasons I recommend that no action be taken in respect to this legislation until the Supreme Court has heard and decided the *Jackson County case.*

The Director of the Budget informs me that the proposed legislation would not be in accord with the program of the President.

Sincerely,

FRANK MURPHY, *Attorney General.*

[Report on H.R. 10644, 75th Cong.]

DEPARTMENT OF THE INTERIOR,
Washington, June 8, 1938.

Hon. WILL ROGERS,
Chairman, Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for a report on H.R. 10644, a bill for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for other purposes.

This proposed legislation would authorize the payment to Indian allottees or Indian heirs of deceased allottees for all taxes paid by them on so much of their allotted lands for which patents in fee were issued prior to the expiration of the trust period without application or consent of the patentee and which have been or may hereafter be restored to a trust status through cancelation of the patents in fee by the Secretary of the Interior.

Further, the bill would authorize the reimbursement to Indians by the Secretary of the Interior of the amount of taxes, including penalties and interest, in any case in which there is a claim against a State, county, or other political subdivision thereof for taxes collected upon such lands while the patent in fee was outstanding and where the claim had been reduced to judgment and remains unsatisfied, provided the State, county, or political subdivision paid the costs of the suit and caused the judgment to be released. In event a claim has been reduced to judgment and the judgment satisfied, the bill provides for reimbursement to the State, county, or political subdivision of the actual amount of the judgment exclusive of the costs of litigation.

Section 2 would authorize the appropriation of $75,000, or so much thereof as may be necessary, to carry out the provisions of the act, said appropriation to remain available until expended.

The unfortunate situation confronting this Department, the Indians involved, and the various counties situated within most of those States having an Indian population may be attributed to an interpretation by this Department of the provisions of the act of May 8, 1906 (34 Stat. 182), which provides that the Secretary of the Interior may, whenever he shall be satisfied that any Indian allottee is capable of managing his or her own affairs, cause a patent in fee to be issued to such allottee. Under this authority it was at one time believed that no application for a patent in fee by the Indian allottee was required.

In the early part of 1917 this Department issued a "Declaration of policy in the administration of Indian affairs," pursuant to which patents in fee were issued to able-bodied adult Indians of less than one-half Indian blood, and also to those adult Indians of one-half or more Indian blood who were found competent upon investigation by competency commissions appointed for that purpose. This policy remained in force up to and including the year 1920. During this period approximately 10,000 patents in fee were issued to Indian allottees who came within the foregoing classification. Although applications were procured from a few of the Indian allottees, we are here concerned only with those cases where patents in fee were arbitrarily issued during the trust period without application by or consent to the patentee.

In the case of two Coeur d'Alene Indians, who, like many others, had refused to accept their patents, this Department canceled their patents and brought suits to test the validity of taxes levied upon their lands. The United States Circuit Court of Appeals, Ninth Circuit, in a decision rendered July 2, 1923, in these two cases

(*United States* v. *Benewah County* and *United States* v. *County of Kootenai, Idaho*, 290 Fed. 628), held that the Secretary of the Interior had no authority to issue a patent in fee to an Indian allottee during the trust period without an application therefor; that a patent so issued did not convey the legal title and that the Indian allotments involved in the suits were not subject to taxation by State authorities during the years the invalid patents were outstanding, as the right to exemption from taxation was vested and could only be divested by due process of law or on application of the allottee or with his consent.

In order to afford relief to those Indian allottees to whom patents in fee had been issued without their application or consent, the Secretary of the Interior was authorized by the act of February 26, 1927 (44 Stat. 1247), as amended by the act of February 21, 1931 (46 Stat. 1205), on application by the allottee or his or her heirs, to cancel patents in fee issued during the trust period without application by or consent of the patentee, insofar as the patents covered lands remaining undisposed of and without encumbrances by the patentees or Indian heirs, provided such lands had not been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption had expired. Approximately 470 of the original 10,000 "forced" patents have been canceled under the authority contained in the acts referred to.

Upon cancelation of patents in fee county officials have been requested to remove the allotments from the tax assessment rolls, cancel any unpaid assessments, tax sales or tax deeds, and refund any taxes paid by the Indian allottees. Such requests have in some instances been complied with, but in the main have been refused, thus making it necessary to institute suits through the Department of Justice to enforce the relief desired. Suits involving approximately 100 allotments have already been instituted and judgments obtained against various counties for refund of taxes in the aggregate sum of approximately $25,000, exclusive of the costs of litigation.

The question of whether reimbursement should be made by the Federal Government to all counties involved for all judgments paid by them is, of course, fundamentally one for the consideration of Congress. Patents in fee having been recorded covering lands allotted to Indians the county authorities naturally felt they were entitled to assess and collect taxes thereon. Doubtless when requests were made for reimbursement of such taxes after the patents in fee were canceled and trust patents reinstated or reissued, the counties either did not have funds in their treasuries available for such payment or the county officials lacked legal authority to pay. Clearly the local authorities were not at fault for taxing such land while patents in fee were outstanding.

In a report submitted to the chairman of the Committee on Claims, House of Representatives, on March 17, 1938, on H.R. 6393, a bill for the relief of certain counties in the State of South Dakota for judgments against them because of patents in fee having been erroneously issued by the United States on certain trust lands, it was said that if that bill was to receive favorable consideration it should be amended so as to authorize reimbursement not only to the counties in South Dakota named in H.R. 6393 but also to the counties in other States for amounts they have been required to pay the Indians on account of taxes and penalties collected, but that the costs incurred by the counties in resisting tax adjustment suits should not be reimbursed.

The text of H.R. 10644 is identical with the text suggested by this Department in its report on H.R. 6393, in the event that bill received favorable consideration by

the Congress. The Acting Director of the Bureau of the Budget, however, in commenting upon the proposed Department report on H.R. 6393 advised "that the proposed legislation, either in its present form or if amended as you indicate, would not be in accord with the program of the President."

Sincerely yours,

E. K. BURLEW,
Acting Secretary of the Interior.

[Report on H.R. 6393, 75th Cong.]

DEPARTMENT OF THE INTERIOR,
Washington, March 17, 1932.

Hon. AMBROSE J. KENNEDY,
Chairman, Committee on Claims,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for a report on H.R. 6393, a bill for the relief of certain counties in the State of South Dakota for judgments against them because of patents in fee having been erroneously issued by the United States on certain trust lands.

This legislation would authorize the payment of a total sum of $19,443.23 to certain counties in South Dakota as reimbursement for judgments procured against them on or before December 31, 1936, for taxes collected on the allotments of various Sioux Indians to whom patents in fee were issued without their application or consent, prior to the expiration of the proposed trust, which patents were subsequenly canceled by this Department. This sum also includes the costs of the various actions in law and equity for the recovery of taxes collected and injunctions restraining further assessment, levy or collection of taxes on the lands involved.

The unfortunate situation confronting this Department, the Indians involved, and the various counties situated within most of those States having an Indian population may be attributed directly to an erroneous interpretation by this Department of the provisions of the act of May 8, 1906 (34 Stat. 182), which provides that the Secretary of the Interior may, whenever he shall be satisfied that any Indian allottee is capable of managing his or her own affairs, cause a patent in fee to be issued to such allottee. Under this authority it was at one time believed that no application for a patent in fee by the Indian allottee was required.

In the early part of 1917 this Department issued a "Declaration of policy in the Administration of Indian Affairs," pursuant to which patents in fee were issued to able-bodied adult Indians of less than one-half Indian blood, and also to those adult Indians of one-half or more Indian blood who were found competent upon investigation by competency commissions for that purpose. This policy remained in force up to and including the year 1920. During this period approximately 10,000 patents in fee were issued to Indian allottees who came within the foregoing classification. Although applications were procured from a few of the Indian allottees, we are here concerned only with those cases from a few of the Indian allottees, we are here concerned only with those cases where patents in fee were arbitrarily issued during the trust period without application by or consent of the patentee.

In the case of two Coeur d'Alene Indians, who, like many others, had refused to accept their patents, this Department conceled their patents and brought suits to test the validity of taxes levied upon their lands. The United States Circuit Court of Appeals, Ninth Circuit, in a decision rendered July 2, 1923, in these two cases (*United States* v. *Benewah County* and *United States* v. *County of Kootenai, Idaho*, 290 Fed., 628), held that the

Secretary of the Interior had no authority to issue a patent in fee to an Indian allottee during the trust period without an application therefor; that a patent so issued did not convey the legal title and that the Indian allotments involved in the suits were not subject to taxation by State authorities during the years the invalid patents were outstanding, as the right to exemption from taxation was vested and could only be divested by due process of law or on application of the allottee or with his consent.

In order to afford relief to those Indian allottees to whom patents in fee had been issued without their application or consent, the Secretary of the Interior was authorized by the act of February 26, 1927 (44 Stat. 1247), as amended by the act of February 21, 1931 (46 Stat. 1205), on application by the allottee or his or her heirs, to cancel patents in fee issued during the trust period without application by or consent of the patentees, insofar as the patents covered lands remaining undisposed of and without encumbrance by the patentees or Indian heirs, provided such lands had not been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption had expired. Approximately 470 of the original 10,000 "forced" patents have been canceled under the authority contained in the acts referred to.

Upon cancellation of patents in fee, county officials have been requested to remove the allotments from the tax-assessment rolls, cancel any unpaid assessments, tax sales or tax deeds, and refund any taxes paid by the Indian allottees. Such requests have in some instances been complied with, but in the main have been refused, thus making it necessary to institute suits through the Department of Justice to enforce the relief desired. Suits involving approximately 100 allotments have already been

instituted and judgments obtained against various counties for refund of taxes in the aggregate sum of approximately $25,000 exclusive of the costs of the litigation.

The question of whether reimbursement should be made by the Federal Government to all counties involved for all judgments paid by them is, of course, fundamentally one for the consideration of Congress. Patents in fee having been recorded covering lands allotted to Indians the county authorities naturally felt they were entitled to assess and collect taxes thereon. Doubtless when requests were made for reimbursement of such taxes after the patents in fee were canceled and trust patents reinstated or reissued, the counties either did not have funds in their treasuries available for such payment or the county officials lacked legal authority to pay. Clearly the local authorities were not at fault for taxing such land while patents in fee were outstanding.

If this bill is to receive favorable consideration it should be amended so as to authorize reimbursement not only to the couties in South Dakota named in H.R. 6393 but also to the counties in other States for the amounts they have been required to pay the Indian on account of taxes and penalties collected. The costs incurred by the counties in resisting tax adjustment suits should not be reimbursed.

With particular reference to H.R. 6393, our records indicate that not all of the judgments for which it is proposed to reimburse the several counties named have as yet been paid. In similar cases elsewhere many of the judgments have been satisfied.

In order that the relief sought may be made generally applicable to all situations and that court action for the recovery of taxes be rendered unnecessary in future cases, and that reimbursement may be made direct to Indians who have paid taxes on lands of the class hereinabove referred to, the following amendments to H.R. 6393 would be required:

Change the title to read "A bill for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for other purposes," and strike out all after the enacting clause of the bill and substitute in lieu thereof the following:

"That the Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe Indian allottees and Indian heirs of allottees for all taxes paid on so much of their allotted lands as, having been patented in fee prior to the expiration of the period of trust, without application by or consent of the patentee, has been or may be restored to trust status through cancelation of the fee patent by the Secretary of the Interior: *Provided*, That in any case in which a claim against a State, county or political subdivision thereof for taxes collected upon such lands the patent in fee was outstanding has been reduced to judgment, and such judgment remains unsatisfied, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes, including penalites and interest, paid thereon, and upon payment by the State, county or political subdivisions thereof of the costs of the suit, to cause such judgment to be released: *Provided further*, That in any case in which such a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to reimburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation.

"SEC. 2. There is hereby authorized to be appropriated the sum of $75,000, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this Act.

"Any appropriations made pursuant to this section shall remain available until expended."

The $75,000 authorized to be appropriated by the bill, as amended, would be sufficient to take care of all those cases in which judgments have been rendered and those now pending in the courts. It would also leave a balance to reimburse those Indians whose patents in fee may be canceled in future years.

The Acting Director of the Bureau of the Budget has advised, however, "that the proposed legislation, either in its present form or if amended as you indicate, would not be in accord with the program of the President."

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

SENATE

76th Congress
3d Session

Report
No. 1488

RELIEF OF INDIANS WHO HAVE PAID TAXES ON ALLOTTED LANDS

APRIL 24, 1940.—Ordered to be printed

Mr. BULOW, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 952]

The Committee on Indian Affairs to whom was referred the bill (H.R. 952), providing for the relief of Indians who have paid taxes on allotted lands for which patents in fee were issued without application by or consent of the allottees and subsequently canceled, and for the reimbursement of public subdivisions by whom judgments for such claims have been paid, having had same under consideration, report thereon with the recommendation that it do pass without amendment.

This bill has been considered by the Committee on Indian Affairs of the House of Representatives; on May 22, 1939, that committee submitted its report (H.Rept. No. 669) to the House recommending its passage and on March 18, 1940, it passed the House.

A full explanation of the purpose of this proposed legislation is contained in said House Report No. 669, a copy of which is attached hereto and made a part of this report, as follows:

[Balance of Report same as H. Rep. No. 669, *supra*.]

EXCERPTS FROM THE ANNUAL REPORTS OF THE SECRETARY OF THE INTERIOR, THE COMMISSIONER OF INDIAN AFFAIRS, AND THE BOARD OF INDIAN COMMISSIONERS FOR THE YEARS 1887-1931.

The primary responsibility for the administration of Indian affairs was transferred to the newly created Department of the Interior in 1849. Act of March 3, 1849, ch. 108, § 1, § 5, 9 Stat. 395 (1849) (repealed in part 1953) (superseded in part 1966) (formerly codified at 19 U.S.C. § 42 (1952) (scattered sections of 5 U.S.C. (1964)) (currently codified in sections of 5, 31, and 43 U.S.C. (1988)).

The Bureau of Indian Affairs was established as part of the Department of War by the Act of July 9, 1832, ch. 174, § 1, 4 Stat. 564 (1832) (codified as amended at 25 U.S.C. § 1 (1988)). Currently the Bureau of Indian Affairs continues to be responsible for the majority of federal duties to Indians.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 50th Cong., 1st Sess. (1887).

Indians becoming individual freeholders.

The most important measure of legislation ever enacted in this country affecting our Indian affairs is the general allotment law of February 8, 1887. By this law every Indian, of whatever age may secure title to a farm, enjoy the protection and benefits of the law, both civil and criminal, of the State or Territory in which he may reside, and be subject to the restraints of those laws. It goes still further. Under it the Indian, in accepting the patent for his individual holding of land, takes with it the title to a higher estate, that of a citizen of the United States, entitled to all the privileges and immunities of such citizenship, and yet invested with all the lawful responsibilities of that position.

The statute is practically a general naturalization law for the American Indian, except that it is provided therein that its provisions shall not extend to the territory occupied by the Five Civilized Tribes and some other advanced communities of Indians. In every other respect the door has been opened through which every individual Indian by proper effort may pass from the savage life to the enjoyment of the fruits and privileges of civilization. The first effect of this law is to clear away the legal obstructions which have heretofore hindered the progress of many of the tribes. At 25-26.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 50th Cong., 1st Sess. (1887).

When the Secretary of the Interior shall have approved the allotments made, then patents for such lands, recorded in the General Land Office, shall be issued to the respective allottees, declaring that the United States will hold said lands in trust for their sole use and benefit for twenty-five years, and at the end of that time will convey them, without charge, to said allottees or their heirs, in fee and free of all encumbrance; the President, however, may in his discretion extend the period beyond twenty-five years. At 3.

After receiving his patent every allottee shall have the benefit of and be subject to the civil and criminal law of the State of Territory in which he may reside; and no Territory shall deny any Indian equal protection of law; and every Indian born in the United States who has received an allotment under this or any other law or treaty, or who has taken up his residence separate from a tribe and adopted the habits of civilized life, is declared a citizen of the United States, but citizenship shall not impair any rights he may have in tribal property. At 4.

I fail to comprehend the full import of the allotment act if it was not the purpose of the Congress which passed it

and of the Executive whose signature made it a law ultimately to dissolve all tribal relations and to place each adult Indian upon the broad platform of American citizenship. Under this act it will be noticed that whenever a tribe of Indians or any member of a tribe accepts lands in severalty the allottee at once, ipso facto, becomes a citizen of the United States, endowed with all the civil and political privileges and subject to all the responsibilities and duties of any other citizen of the Republic. This should be a pleasing and encouraging prospect to all Indians who by experience or education have risen to a plane above that of absolute barbarism. The Indian is not unlike his white brother in moral and intellectual endowments and aspirations, he is proud of his manhood, and when he comes to understand the matter he will cheerfully and proudly accept the responsibilities which belong to civilized manhood. Within a very short time many Indians will be invested with American citizenship, including of course the sacred right of the elective franchise. In fact many Indians became citizens on the date of the passage of the law, for it provides that.

Every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens * * * without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property. At 6-7.

Annual Report of the Board of Indian Commissioners (1887).

The other matter needing the attention of Congress relates to the costs of conducting courts, and of public im-

provements in the Indian country. The lands allotted to the Indians are exempt from taxation for a period of twenty-five years. The Indian has all the rights and privileges of citizenship, but is exempt, in large measure, from the burdens of citizenship.

The country where he lives will be organized into counties and towns. Courts must be established, public buildings erected, roads opened, and bridges built. It can hardly be expected that the white citizens of these counties and towns will pay willingly the whole expense of these public services and improvements. It is not just to require the States and territories to assume this burden, hence, so long as Indian lands are exempted from taxation by the laws of the United States, provision should be made by the United States for re-imbursing to the States and Territories the amount which they will lose by such exemption. With these simple additions, we believe that the severalty act can be a carried out with most beneficial results to the Indians and to our entire county. At 8.

PROCEEDINGS OF THE FIFTH ANNUAL MEETING OF THE LAKE MOHONK CONFERENCE

> Senator Dawes. Mr. Chairman, I hardly see the need of my occupying any portion of the time of this conference upon the matter under discussion to-night. The provision of the law seems to have been so fully comprehended and expounded already that it is not with any hope or any expectation that I shall make it any more clear to you than it now is, but merely that I shall not turn up missing whenever the subject is discussed. For a good many years the Mohonk conference and the friends of the Indian have believed that the Indian problem could never be solved until there was a law giving to the Indian land in severalty and citizenship, and last year we assembled here and the burden of our complaint was that we

> could get no such law enacted. To-day the law confers upon every Indian in this land a homestead of his own; and if he will take it, it makes him a citizen, and opens to him the doors of all the courts in the land upon the same terms that it opens them to every other citizen, imposing upon him the obligations and extending to him the protection of all the laws, civil and criminal, of the State or Territory in which he resides. At 87.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 50th Cong., 2nd Sess. (1888).

The long period of inalienability of the alloted land can not but secure the Indian from its loss through the wiles of bad men, and carry his estate to a more trusty posterity, while it seems to afford him, in the mean time, reasonable security that he shall not want for the necessaries, at least, of life, and that it will increase his supply of comforts in proportion as he shall enlarge his capacity for dealing with it, and as thickening settlement increases both the value of his land and of its products. From such observation as I have been able to make, I give with cordiality my concurrence in this policy, and hope it may be pressed with diligence to a successful execution. At XXXI.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 50th Cong., 2nd Sess. (1888).

There is a third class of persons who are heartily in favor of alloting Indian lands, but who are apprehensive that, under the flexible terms of the allotment act, allotments may be forced upon Indians before they are ready to receive, use, and hold them. An allotment unnecessarily delayed deprives an Indian of just so much opportunity for, or incentive to, progress; but an allotment made to an Indian before he has been made to understand its meaning and purpose takes away from its value

to him, and he may look upon it as a worthless or as an unwelcome thing imposed upon him. It is probable that such an Indian would not only neglect his land, but that he would finally abandon it and become a wanderer. Thus, it is said, that which was intended to be, and rightfully used would be, of benefit to the Indian, may be so used as to drive many of the race into vagabondage, and thus make them what may be called the gypsies of America.

But not withstanding the opposition of the two classes referred to, and of some of the Indian tribes, and the misgivings of a third class, there is no reason for the belief that the policy of making allotments of lands in severalty will be abandoned. At XXXVII-XXXIX.

Annual Report of the Board of Indian Commissioners (1888).

By the act of February 8, 1887, which has been well called the Indian emancipation act, land in severalty is now offered to all who are willing to accept it and prepared to care for it and improve it.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 51st Cong., 1st Sess. (1889).

We should remember in this connection that the system of allotments of lands which has been carried on earnestly by the Government for a number of years is still being pursued vigorously, and that its great objects is to separate the allottee from his tribal relations, and put the older Indians upon lands they may use individually for their support.

Moreover, the allotment of lands is attended by citizenship for the Indian, and that citizenship ought to bring with it the privileges of the common schools of the white man in all its grades; thus whenever the Indian receiving his allotted land, cultivates it and has his family within the borders of any State where the white men have a common school system, the Indian should become

privileged to the use of that system of schooling the same as any one else; but of course this could not be affected without taxation of the Indian on his lands, or a substitute through payment by the Government itself of such taxes. At XLIX-L.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 50th Cong., 2nd Sess. (1889)

Since the publication of the last annual report the work of making allotments on the Winnebago Reservation, in Nebraska, and the Grande Ronde reservation, in Oregon, under the act of February 8, 1887 (24 Stat., 388), has been completed by Special Agents Fletcher and Collins, respectively. The schedules of the allotments on the first named reservation will be transmitted to the Department as soon as the necessary clerical work can be completed. Before acting upon the allotments at Grande Ronde it will be necessary to await the receipt of the plats and field-notes of cert in additional surveys made in the field. At 14.

Annual Report of the Board of Indian Commissioners (1889)

At a special business meeting of the Board, after a long and frank conversation with the Commissioner, it was voted: That this Board will earnestly aid the Commissioner of Indian Affairs in carrying out the plans, proposed by him for the education of Indians and their progress to full American citizenship. At 4.

Next to education in importance is giving to Indians homes and individual rights of property. This is being done under the general severalty act of February 8, 1887, as rapidly as the means provided and the condition of the several tribes will permit. During the last year 1,402 patents have been issued. All Indians are not yet ready to take allotments or sufficiently advanced to make good use of homesteads if granted to them. But we be-

lieve that a majority now desire to enjoy the benefits of the act, and others will, within a few years, be prepared for its application, when they see its stimulating effect upon profitable industry and its influence in promoting better habits of life. At 9.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 51st Cong., 1st Sess. (1890).

Since the last annual report satisfactory progress has been made in work of allotting lands in severalty. At XXXV.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 51st Sess. (1890).

Allotments

Allotment of Land in Severalty on Various Reservations.

As already stated, general authority for the allotment of lands in severalty to Indians located on any reservation created by law, treaty, or executive order, with exceptions noted, was conferred by the act of February 8, 1887 (24 Stats., 388). At XLIV.

Annual Report of the Board of Indian Commissioners (1890).

Allotments and Reduction of Reservations.

We see no reason to doubt the wisdom of the policy, now adopted as the settled policy of the Government, of giving to each Indian a separate holding of land, sufficient for his use and support, and then purchasing the surplus lands and throwing them open for settlement. Under the general severalty act of February 8, 1887, and in accordance with treaty stipulations, 15,607 allotments have already been made to tribes that were most advanced. At 9.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 51st Cong., 2nd Sess. (1891).

The allotment law, commonly known as the Dawes bill, has secured for its author the praise of all interested in the welfare of the Indians. It has been accepted as the very best means of solving the Indian problem, and it is now, as has been pointed out in the earlier part of this report, receiving an administration, chiefly by written consent and agreement of the Indians, that promises to develop rapidly its benefits for allottees. At XXXV.

Efficient administration of what we have, it is believed, will be a source of much more benefit to the Indian than the multiplication of laws. Such administration is being given, and, as has been proven, with immense improvement of the Indian's condition in every way. But there are among the conclusions stated by the Commissioner one or two, without passing upon others, that are particularly noticeable. He remarks (p. 36), as to.

COMPULSORY EDUCATION OF CHILDREN OF ALLOTTEE CITIZENS

The General Government has the right, both for its own protection, for the promotion of the public welfare, and for the good of the Indians, not only to establish schools in which their children may be prepared for citizenship, but also to use whatever force may be necessary to secure to the Indian children the benefit of these institutions. Even in the cases where, by taking their lands in severalty, they are in process of becoming citizens, they are still in a state of quasi-independence, because the General Government withholds from them for twenty-five years the power of alienating their lands, while by exempting them from taxation for the same period it practically excludes their children from the public schools. For these reasons it would seem that the Government has not only the right, but is under obligation to make educational provisions. At XXVIII.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 51st Cong., 2nd Sess. (1891).

In compensation for his protection by the State in all these privileges and immunities, or such as he may be qualified to exercise, the Indian as a citizen will owe allegiance to the government of the State. Allegiance seems to be the term adopted to express in one word all the burdens and obligations of the citizens of a State or nation. Among these are those of obedience to the law of the State, contributing, as by payment of taxes, to its support and bearing arms in its defense when called upon to do so. At the same time, with the exception that their lands received under allotment laws will be exempt from taxation for a period of twenty-five years, and possibly longer, they will be subject to the burdens borne by other citizens, and must manage their own affairs. At 24-25.

Sixth. That the General Government has the right, both for its own protection, for the promotion of the public welfare, and for the good of the Indians, not only to establish schools in which their children may be prepared for citizenship, but also to use whatever force may be necessary to secure to the Indian children the benefit of these institutions. Even in the cases where, by taking their lands in severalty, they are in process of becoming citizens, they are still in a state of quasi-independence, because the General Government withholds from them for twenty-five years the power of alienating their lands, while by exempting them from taxation for the same period it practically excludes their children from the public schools. For these reasons it would seem that the Government has not only the right, but is under obligation to make educational provisions for them, and to secure to their children the benefits of those provisions. At 36-37.

The general allotment act provides that lands, when allotted, shall not be immediately conveyed to the allottees, but shall be held, in trust for a period of 25 years (which period may be indefinitely extended by the President), at the end of which it is to be conveyed to the allottee or his

heirs, in fee, discharged of the trust and free of all encumbrance. The allottee is thus secured in the possession of his home for at least 25 years, during which time the force of example, education, and contact with white civilization will, in a great degree, fit him for absolute and unconditioned ownership. Special acts have since been passed or agreements concluded under which allotments have been made or are to be made, but all of them contain substantially the same provision as to the trust period. At 41.

Annual Report of the Board of Indian Commissioners (1891).

Allotments and Patents.

The work of allotting lands in severalty to Indians and securing to them separate homesteads has been continued, and we see no reason to doubt the wisdom of the policy. During the year 2,104 patents have been issued and 2,830 allotments have been approved and the issuance of patents directed. Already more than 16,000 Indians have become citizens of the United States, and about 4,000 more, by taking allotments, are soon to become citizens. Adding the 7,610 in Oklahoma who have received allotments under agreements ratified by the last Congress, we have a total of 27,610 Indian American Citizens, subject to the same law and entitled to the same privileges as other citizens; and they have surrendered to the United States about 23,000,000 acres, which have become a part of the public domain and open for settlement and improvement. In their new position, not a little perplexing and bewildering, the Indians will still need kindly supervision and all the safeguards that law and humanity and instruction can throw around them. One thing especially needed to give full success to the allotment policy, which we have before urged, and to which, we see, with much satisfaction, the President has called attention in his late mes-

sage, is provision for public improvements in the counties where Indians hold a large part of the lands. They have white neighbors, and the number will increase rapidly, as the unallotted lands are sold. Indian homesteads are inalienable and untaxable for twenty-five years. The white settlers must pay all the taxes for the support of schools and for all public uses. In such circumstances it will hardly be possible to maintain a kindly feeling between the races. The Indian will be regarded as a burden and his children will not be welcomed into the public schools. Relief from such evils can be given by withholding from the proceeds of lands purchased from Indians, or by direct appropriation, of sufficient funds to pay the Indian pro rata share of the taxes, according to the value of the lands held by them. This would elevate the Indian to equality with his white neighbor and remove the hindrance to progress and development which seems now involved in the inalienable feature of the allotment policy. At 7.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 52nd Cong., 1st Sess. (1892).

The report of the Commissioner of Indian Affairs shows that since the date of his previous annual report patents have been issued and delivered to 1,303 Indians, as follows: 265 on Grande Ronde reservation, Oregon; 167 to Poneas in South Dakota; 109 to Iowa in Oklahoma Territoy; 1 to a Miami Indian; 242 to Wyandottes; 157 to Ottawas and 68 to Modoes in the Indian Territory, and 284 to Papagoes on San Xavier reservation in Arizona. Also, that patents have been prepared, but not yet delivered to 5,245 Indians: 3,321 to Cheyennes and Arapahoes, 1,365 to the Citizen Band of Pottawatomies, and 561 to Absentee Shawnees, all in the Territory of Oklahoma and all under and in accordance with agreements with those Indians ratified by the Indian appropriation act of March 3, 1891. At XXXII.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 52nd Cong., 1st Sess. (1892).

The essential element of the policy adopted by the Government is suggested in the one phrase—American citizenship. What is Commonly known as the "Dawes bill," or the "land-in-severalty law," which received Executive sanction February 8, 1887, has radically fixed our method of dealing with the Indians. By its operation those who take their land in severalty become citizens of the United States, entitled to the protection of the courts and all other privileges of citizenship, and are amenable to the laws and under obligations for the performance of the same duties as devolve upon their fellow-citizens. At 6.

Annual Report of the Board of Indian Commissioners (1892).

Since the general allotment bill became a law, on the 8th of February, 1887, allotments in severalty have been made to 15,482 Indians, and of these about 9,600 have been completed during the last year. Adding those who, under other acts and treaties, have taken allotments, the whole number who have become citizens is more than 30,000, and about 50,000 others are now receiving, or will soon receive, allotments. At this rate of progress the work will be substantially completed in a few years, and nearly all Indians will become individual landowners and have the opportunity, at least, of making for themselves comfortable homes. At 1.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 52nd Cong., 2nd Sess. (1893).

A fair examination of the work of this Bureau for the last fiscal year, furnishes proof in support of the wisdom of the policy which for the past few years has controlled the administration of Indian affairs. Slowly, but steadily, these wards of the nation are being advanced to a condition suited for citizenship. At XVI.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 52nd Cong., 2nd Sess. (1893).

With respect to this question Agent Patrick was instructed by this office April 20, 1893, that improvements of a permanent character made on allotments such as houses, fences, broken ground, etc., are a part of the realty; that while the allotments made to the Indians of his agency were so made in accordance with the provisions of agreements with the various tribes, they are held in trust by the United States for the use and benefit of the allottees for the period of twenty-five years, at the expiration of which period they are to be patented in fee to them discharged of the trust and fee of all charges or encumbrances whatsoever. He was notified that in an opinion by the Attorney-General, dated July 27, 1888 919 Opinions, 161), it was held that lands allotted to Indians under various acts of Congress.—

> are exempt from State or Territory taxation upon the ground above stated with reference to the act of 1884, namely, that the lands covered by the act are held by the United States for the period of twenty-five years in trust for the Indians, such trust being an agency for the exercise of a Federal power, and therefore outside the province of State of Territorial authority;

and that as improvements of a permanent character made on the allotments are a part of the lands it would follow under the Attorney-General's opinion that they are not taxable by the authorities of the Territory of Oklahoma. At 53.

Annual Report of the Board of Indian Commissioners. (1893).

They urged that Indians should be taught, as soon as possible, the advantage of individual ownership of property, and should be given land in severalty as soon as it

is desired by any of them, and that the tribal relations should be discouraged; that the titles be made inalienable from the family of the holder for at least two or three generations; that the civilized tribes in the Indian Territory should be taxed and made citizens of the United States as soon as possible. At 4.

Lands in Severalty.

As above stated, the commission, in their first report twenty-five years ago, recommended the policy of granting homesteads to Indians. As early as the year 1878 they made a draft of a bill to secure this end by legislation, and they continued to urge its adoption from year to year, until finally, in 1887, the general allotment act was passed by Congress. This has been well called the Indian emancipation act. It frees those who accept it from the shackles of the reservation system and makes them citizens of the United States, subject to law, and entitles them to equal rights with all other citizens. They have at least the opportunity to make for themselves permanent homes and to become self-supporting. Under this general act and general special acts, 24,190 allotments have been made and 13,625 patents have been issued. At 5-6.

PROCEEDINGS OF THE BOARD OF INDIAN COMMISSIONERS AT THE ELEVENTH LAKE MOHONK INDIAN CONFERENCE

Address of Senator Dawes

That is not all. The United States has put him upon 160 acres of land, and has declared that it will hold that land for him for twenty-five years free from all State taxes or any other charge whatever. And yet, if he is to be educated at all, unless the United States shall educate him, he must be educated by that State which, the United States says, shall not tax a dollar of his property to defray the expenses of his education. There are whole counties in some of these Western States to-day all made up of allotted

Indians and not a foot of their land can be taxed by those States. The State must apply, out of its treasury, their schoolhouses if they have them, their roads if they have them, their bridges if they have them, their courthouses if they have them. The State must maintain order among them if they have order. And the white people of the other counties of the State must pay for all these things. Therefore it is that, while the United States is forcing this process, there comes upon the Government a louder call for increased appropriation and more efficient work on its part to supply that which it has declared the state shall not do. It is in lieu of the taxation it has forbidden.

You must take the Indian by the hand and see it it that he does not fall back into the stream. The Government must do it. You can not ask the State of Nebraska to take three counties of allotted Indians, not a foot of whose land can be taxed for twenty-five years for the support and civilization of those who live in these counties, you can not ask Nebraska, with any expectation that when will respond, to meet the needs of the Omaha Indians at this moment. Pretty soon the State will rebel against this idea of having all these allotted land exempt for twenty-five years from taxation; and the United States must meet it with an equivalent. The equivalent is to do for these Indians now, and in this matter, what the Government has put it out of the power of the State to do. At 60-61.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 53rd Cong., 2nd Sess. (1894).

I do not question the advisability of allotting land to Indians in severalty, but I do most seriously question the propriety of this course before the Indians have progressed sufficiently to utilize the land when taken. The allotments should be made to the Indians in severalty for

the good of the Indians, for the advancement of the Indians, not for the purpose of obtaining land connected with the Indian reservation to satisfy the insatiable desire of border men, who obtain it frequently not for homes, but for speculation. At III.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 53rd Cong., 2nd Sess. (1894).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1894).

One evil, and we earnestly called attention to it immediately after the enactment of the general allotment law in 1887, is thrown upon white residents in the near vicinity of such lands. The Indian enjoys the privileges of citizenship, but is exempt from its duties. The county where he lives is organized into counties and towns. Courts, public buildings, schools, roads, and bridges must be maintained. It can hardly be expected that the white citizens will pay willingly all those expenses, nor is it just to require it. Provision should be made for reimbursing to the States the amount which they lose by the exemption of Indian lands from taxation. To secure this result an act passed the Senate February 6, 1893, but it failed to pass the House. A similar act was introduced at the first session of the present Congress, but has not yet become a law. We hope the subject may receive early attention. At 6.

Report of the Secretary of the Interior, H.R. Exec. Doc. No. 1, 53rd Cong., 3rd Sess. (1895).

There are a number of changes that should be made in the present allotment system which require Congressional action. According to the present law an Indian becomes a citizen of the United States upon receiving his allot-

ment; he is frequently ready to receive land before he is prepared for the consequences of citizenship.

Allotments should really be made long before the reservations are opened, and each Indian should be settled upon his homestead and should be self-supporting before citizenship is conferred upon him. Indeed, when citizenship is conferred upon him the Government ought to let him alone and leave him to take his place, surrounding him then with no more restraint and giving him no more help that is accorded to other citizens. At IX.

Annual Report of the Board of Indian Commissioners (1895).

But the sale of allotted lands should not be allowed under any circumstances. The act of August 15, 1894, granting to the citizen Pottawatomie and and Western Shawnee Indians the right to sell and convey portions of their allotments, has inflicted great loss and injury upon those Indians and inured to the benefit only of land sharks and speculators. We earnestly recommend that the law be repealed and that no more legislation of that kind be enacted. The promise contained in the patents issued to allottes should be sacredly kept, and the lands allotted held for the period of twenty-five years in trust for the sole use and benefit of the Indians to whom the allotments have been made. This wise and beneficial purpose of the general allotment act to protect the Indians in the possession of their homesteads should not be annulled and frittered away by specific legislation. The disastrous results of the first experiment in this direction ought to be a sufficient warning against any repetition of the act. At 8.

PROCEEDINGS OF THE BOARD OF INDIAN COMMISSIONERS AT THE THIRTEENTH MOHONK INDIAN CONFERENCE.

> Another obstacle has been attended to by Dr. Riggs; and that is, when the lands are not taxable for twenty-

> five years, and, while they are made citizens and entitled to the protection of the courts, with a right to sue and to have school privileges, these things have been denied them by their fellow-citizens. They have said, "We can not give you court privileges of schooling, for the reason that we get no taxes from you." The law is ample to protect them in this regard; but it takes an extraordinary effort to secure these rights and privileges, because public sentiment is in opposition to the law. This might be remedied by legislation. Where lands are allotted to a tribe of Indians, and there are surplus lands to be sold, have the money arising from the sale placed in the treasury, and such portion of it taken and paid to the municipalities as would be equivalent to the money that would have been raised by taxation. At 37.

THE SEVERALTY LAW

Now, what is the matter with the law? Is it not enough to say to any Indians, You may have 160 acres of land for your home? The Government shall hold for you the title to it for twenty-five years. It will convenent to hold it for you and for your use, and for nobody's else use, and no contract that you can make, no tax that any locality can impose upon it, no lease, mortgagee, or lien whatever during that twenty-five years shall have the slightest effect on it. Is not that enough? We all like the Dutchmen at Manhattan in the olden time. When they saw English war ships sailing up the bay they met in council and solemnly resolved that the English ought to be, and the same hereby are, conquered, and then went off and lighted their pipes and folded their arms. That is what we did. Now, what is the matter with this severalty law: It has been fallen among thieves, and there have not been enough good Samaritans around to take care of it. Why do I say that it has fallen among thieves? It was necessary to put into that law this clause: That, after allotments shall be made upon the reserva-

tion the Government is hereby authorized to sell what shall be left of these reservations. The men who buy land of the Indians, just as the Commissioner showed you, saw at once their opportunity. If you can get the Indian set out in severalty, the white men will get the rest of it, and they will not have anything to do but see to it that the rest of it is the best part of the reservation. At 40-41.

Report of the Commisioner of Indian Affairs to the Secretary of the Interior, H.R. Exec. Doc. No. 1, 53rd Cong., 3rd Sess. (1895).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 54th Cong., 1st Sess. (1896).

Allotments are in progress on the Klamath, Rosebud, and Shoshone reservations, but have been suspended on the Hoopa Valley, Mission, and Lower Brule reservations for further surveys; 606 allotments to nonreservation Indians have been approved by the Department, and 181 new allotment applications are under consideration. At XLII

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 54th Cong., 2nd Sess. (1896).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 54th Cong., 1st Sess. (1897).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 55th Cong., 3rd Sess. (1897).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 55 Cong., 2nd Sess. (1898).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 55th Cong., 3rd Sess. (1898).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 55th Cong., 3rd Sess. (1899).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners. (1899).

Department of the Interior. Board of Indian Commissioners, Washington, D.C., April 5, 1898.
United States Indian Agent:

We have been requested to report the results of the policy of alloting lands in severalty to Indians. To do this intelligently and accurately we need information from agents who are on the ground and familiar with the facts.

Please, favor us with replies to the following questions:

1. How many allotments have been made to the Indians of your agency?

2. How many patents have been issued?

3. How many Indians are living on their allotted lands?

4. To what extent are they cultivating their lands?

5. To what extent are their lands leased and with what results?

6. What in your opinion are the benefits or the evil of the allotment policy?

By replying, when convenient, and making such suggestions as you may deem fit, you will greatly oblige.

Yours respectfully. E. Whittlesey, Secretary.

Replies have been received from twenty agents, covering about 25,000 allotments and patents. These letters we publish with this report, and they will be read with interest, as they give the opinions and conclusions of intelligent and competent men on the ground.

REPLIES FROM INDIAN AGENTS ON RESERVATIONS WHERE ALLOTMENTS HAVE BEEN MADE.

Crow Creek Indian Agency
Crow Creek, S. Dak., May 2, 1898.

Mr. E. Whittlesey

Secretary Board of Indian Commissioners, Washington, D.C.

Sir: Replying to your letter of April 5, 1898, in which you ask for information as to the results of the policy of allotting land in severalty to Indians, would say—

1. That there have been 879 allotments made to the Indians of this agency.

2. That there have been 199 patents issued.

3. That all the Indians that have been allotted are living upon their allotments.

4. That they are cultivating their lands to a small extent for the reason that crops are almost a sure failure by reason of the repeated droughts.

5. That there are none of the lands leased.

6. That, in my opinion, the allotment plan is disadvantageous in many respects, more especially in a country like this where agriculture is almost a failure. I would not like to discourage this plan here now for the reason

that the Indians have all taken their allotments and are living upon them. But if these people could have been given a sufficient number of cattle to start a common herd among them and the reservation fenced, I think they would have been in much better condition now than they are by trying to till the soil and graze whatever of stock they have upon their own lands. This is preeminently a stock country, and I think this industry will be the one that will eventually make these Indians self-supporting. They have been averse to taking their patents for the reason that they think they will become citizens then and will have to pay taxes and be amenable to allow the laws of the white man. At 12.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 56th Cong., 1st Sess. (1900).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 56th Cong., 1st Sess. (1900).

The attention of this office has, at various times, been called to the unsatisfactory manner in which the personal estates of deceased Indians and of minor Indian wards are managed; it being reported that in many cases the administrators and guardians are irresponsible and their sureties worthless, so that the proper heirs and the Indian wards get very little or no benefit from what is rightfully due them. Section 6 of the general allotment act of February 8, 1887 (24 Stats., p. 388), provides that all Indians who have received allotments are entitled to the rights of citizenship, and shall have the benefit of and be subject to the laws of the State or Territory in which they reside. At 37.

PAPERS ACCOMPANYING REPORT OF COMMISSIONER OF INDIAN AFFAIRS.

REPORT OF AGENT FOR SAC AND FOX AGENCY

Indians—The Sac and Fox Indians were allotted 160 acres of land per capita in 1891, 80 acres of each allotment to be held in trust by the Government for a period of twenty-five year exempt from taxation, the remaining 80 acres to be held in trust for a period of five years exempt from taxation, with the privilege of a longer term at the request of the tribe and the approval of the President of the United States. In accordance with the above clause, the five years trust period was extended to fifteen years, thus barring sale or taxation until the year 1906. At 304.

Annual Report of the Board of Indian Commissioners (1900).

Need of action in this matter is still further emphasized by the fact that the estate of a deceased allottee can not be probated and settled under State and Territorial laws: for the real estate of such a deceased Indian can not be sold to meet his debts, or for the partition of his estate among the heirs; because his land is held for twenty-five years after allotment, under a protected title which renders sale impossible. In the ordinary course of nature, of the adults who receive allotments on any reservation an entire generation of adult allottees will have died before patents in fee simple are given by the Government. as things now are it is practicably impossible to determine and to preserve a record of the heirs of such allottees who would be entitled to receive the patent in fee simple, at the expiration of twenty-five years after the allotment. At 16.

(2) Establish at each agency (and the county courts of counties where allotted Indians are to reside) a system of permanent records of all marriages, births, and deaths

of Indians who now hold, or who are likely to hold, allotted lands under the "protected title of twenty-five years." At 21.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 56th Cong., 2nd Sess. (1901).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 56th Cong., 2nd Sess. (1901).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1901).

The great significance of the general allotment act, known as the Dawes bill, and enacted in February, 1887, lies in the fact that this law is a mighty pulverizing engine for breaking up the tribal mass. It has nothing to say to the tribe. It acts directly upon the family and the individual. Through a homestead it seeks to develop personality and regard for the family in the individual. By making every Indian who comes under its provisions a citizen of the United States it seeks to put a new allegiance and loyalty to our Government in place of the old allegiance to the Indian tribe. At 7.

PROCEEDINGS OF THE BOARD OF INDIAN COMMISSIONERS AT THE EIGHTEENTH LAKE MOHONK INDIAN CONFERENCE

The General Allotment Act Recognizes the Individual and the Family.

Such was the condition of Indians on the reservation, and such the status of the Indian before the laws of the United States, until the Dawes bill, the general

> allotment act, became a law in 1887. With the provisions of this law you are all familiar. It is of the greatest value in and for itself, by reason of the result which it immediately accomplishes in securing to Indians land for their homes, and in settling them upon these lands. It gives to each Indian a title to his allotment, protected and inalienable for the first twenty-five years; and upon the expiration of that period it gives him a patent in fee simple. But it does more than this. It makes him a citizen of the United States, Protected by, and subject to, the laws of the State or Territory in which his land lies, from the day on which he takes his allotment. At 29.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 57th Cong., 2nd Sess. (1902).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. 5, 57th Cong., 2nd Sess. (1902).

Under this act all the lands that have been allotted in severalty to Indians may after their death be sold and conveyed by their heirs. This removes the restrictions hitherto existing as to the alienation of these lands, except such of them as are held as homesteads and those held by the Five Civilized Tribes, the later exception being based upon a decision of the Department rendered August 11, 1902. These inherited lands are now held in trust by the United States, but the approval by the Secretary of the interior of such conveyances as may be made under this law is the final administration of the trust, and the purchaser takes a fee-simple title, clear, free, and unencumbered. The lands then become subject to taxation under the laws of the State or Territory in which they are situated. At 65.

Annual Report of the Board of Indian Commissioners (1902).

The aim of President Grant in organizing this Commission, and of Congress, as expressed in the law which established it, was to "promote civilization among said Indians, bring them, where practicable, upon reservations, relieve their necessities, and encourage their efforts at self-support." And in the regulations issued by the President, June 3, 1869, defining in outline the duties of the Board, the sixth paragraph contained this provision:

The Commission will, at their Board meetings, determine upon the recommendations to be made as to the plans of civilizing or dealing with the Indians.

After a year of experience and observation, in their first report the Board (in addition to the reforms above referred to which introduced strict business methods into the purchase and inspection of goods), urged that Indians should be taught as soon as possible the advantage of individual ownership of property, and should be given land in severalty as soon as it was desired by any of them; that the tribal relation should be discouraged; that the titles to individual holdings of land should be made inalienable from the family of the holder for at least two or three generations. The general allotment act began the process of setting Indians free from the reservation system. The reception of an allotment of land to which the title is by law protected from alienation or taxation for twenty-five years makes the allottee a citizen of the United States and subject to the laws of the State of Territory where he resides. Through this act the opportunity to make for themselves permanent homes and to become self-supporting has been opened to the Indians, and under this act, and general and special acts following its principles, over 70,000 allotments have been made, and 70,000 Indians have been made citizens, have been brought under the protection of law, and introduced to the civilizing influences of American Life.

During these last months this Board, through its secretary, has been engaged in correspondence with all the Indians agents and school superintendents who act as agents, to secure statistics as to the condition of allotted Indians; the amount of allotted land on which Indians reside which is under cultivation; the establishment of family life with proper regard for marriage laws; the full registration of family relationships, and of births and deaths, at each agency; and in general as to the progress of the Indians in self-support and toward civilization and active participation in the local and political life of our country.

While some discouraging features are to be noted in connection with the operation of this act, and while difficulties as to the inheritance and the sale of allotments belonging to deceased allottees, which were foretold in earlier reports of this Board, have proved serious at some centers, there is upon the whole a very gratifying progress manifest in the fifteen years since the passage of the general allotment act. At 5, 7.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 58th Cong., 2nd Sess. (1903).

The Secretary of the Interior gave only general comments as to the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 58th Cong., 3rd Sess. (1903).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1903).

To Support Schools and courts, some equivalent should be promptly provided to take the place of the taxation from which Indian allotted lands are by the severalty act exempt for twenty-five years.

We wish to commit to the careful consideration of Congress and of the Department of the Interior the pressing question of means to support courts and schools and to open up and keep in repair highways and bridges in counties where most or all the land is allotted to Indians and is exempt from taxation under the United States trust patent given in accordance with the general allotment act of 1887. There seems to be no doubt that for the majority of the Indians to whom land has so far been allotted the provision of a trust patent making the land inalienable for twenty-five years and protecting it from liens of any kind, has been upon the whole a wise and helpful measure for the Indians. Exemption from taxation seemd a wise and necessary provision in carrying out this general scheme of allotment. Otherwise it was to be expected that Indians who had not been instructed in agriculture or accustomed to labor upon the land, when they began to live upon their allotted land would be unable to pay taxes, and in many cases they would default in the payment of assessed taxes so frequently that the result would be the loss of their lands through the operation of the tax law. There are now many of the younger Indians who have been educated in schools and taught to labor, who are quite as competent to bear the burden of taxation upon their allotted lands as are whites. Nevertheless, none who are close observers of Indians affairs can doubt that exemption from taxation has been upon the whole the best thing for the Indians who have thus far received allotments. The keen greed for land on the part of eager and often unscrupulous white men would have deprived most of the allottees of their holdings had the land not been protected by this trust patent. But where the larger part of the land of a county is thus exempt from taxation, the white settlers who are taxed for the support of the local courts, the schools, and the highways, as well as for the care of paupers and the insane, must of necessity feel their burden an exceptionally heavy one. And it is perfectly natural that the

objection on the part of the white taxpayers to increasing the burden of taxation which they already bear should make them very slow to admit Indians to the full protection of the courts and the law. Such white taxpayers say, not without reason, that it is not fair to have the machinery of their courts used and bills of expense to the county incurred to protect the person or the property rights of Indians who do not themselves pay any part of the cost of such courts. Allotted Indians often fail to get justice done them because of motives of economy on the part of white taxpayers, who keep the Indians out of the courts because they themselves feel wronged by the undue load of taxation which the exemption of Indian lands throws upon the whites in the support of courts and in the extension and improvements of the public highways, the maintenance of schools, and the care of paupers and of the insane. As a Board we have long been convinced that legislation ought to provide for the payment of a fair proportionate share of such expenses; the amount to be as nearly as posible equivalent to that which would accrue from the taxation of these protected Indian lands. Protection by the local courts is a condition necessary to the development of family life for these Indians; and experience in the right use of these courts as well as a share in roadmaking and in the care of the paupers and the insane, is essential to the right training of these Indian citizens to habits of independence, self-support, and true Americanism. At 9-10.

CAN TRIBAL FUNDS BE USED FOR THIS PURPOSE?

We have suggested in past years the need of legislation to make good in State and local governments the lack of those funds for school, courts, highways, etc., which would accrue from the taxation of lands now not taxed because allotted to Indians. We believe that money for this purpose should be provided by the United States Government. Can this be done equitably by using for

this purpose in certain instances a portion of the tribal funds under the custody of the United States Government, to offset the exemption of these lands from taxation? And is not practicable to devise a plan by which, when reservations are broken up by the allotment of land in severalty to Indians, from the sale of the excess of the land not needed for allotments a portion of the proceeds shall by law be devoted to the offsetting of such exemption of Indian lands from taxation? At 11.

It seems to us that there be need be no hesitation about breaking up tribal funds, except where it may seem wise to reserve a portion of such funds to be applied to school purposes, road making, and the support of courts, in counties where allotted Indians are thickly settled, during the twenty-five years of protected title for Indian allotments. At 12.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 58th Cong., 3rd Sess. (1904).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of Interior, H.R. Doc. No. 5, 58th Cong., 3rd Sess. (1904).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1904).

CAN PROVISION BE MADE BY GENERAL LAW FOR THE PAYMENT FROM UNDIVIDED TRIBAL FUNDS OF AN EQUIVALENT TO STATES, COUNTIES, AND TOWNS FOR THAT TAXATION FOR THE SUPPORT OF COURTS, SCHOOLS, ROADS, AND POOR RATES, FROM WHICH INDIAN ALLOTTED LANDS ARE FOR A TERM OF YEARS EXEMPTED? At 8.

Report of the Secretary of the Interior, H.R. Doc. No. 5, 59th Cong., 1st Sess. (1905).

The Secretary of the Interior gave only general comments on the progress of allotments.

Report of the Commissioner of Indian Affairs to the Secretary of the Interior, H.R. Doc. No. 5, 59th Cong., 1st Sess. (1905).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1905).

[W]hether the allotted Indians, through the period of twenty-five years for which United States holds his land nontaxable and inalienable . . .

Annual Report of the Secretary of the Interior, Vol. 1 (1906).

This act [Burke Act] materially modifies the general allotment act of February 8, 1887, and provides, among other things, that until the issuance of fee-simple patents, all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States. It also confers authority on the Secretary of the Interior, in his discretion, to terminate the trust period by issuing a patent in fee simple whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs. At 49.

In connection with the taxation and care of these, the Commissioner refers to a decision of Judge Munger, of the circuit court of Nebraska, in which it was held that funds derived from the sale of inherited lands were taxable the same as the property of any ordinary citizen. On appeal to the United States circuit court of appeals, eighth circuit, at its December term in 1905, a decision was rendered of which the following is a syllabus:

> 1. *Indian lands—State taxation—Allotments exempt from taxation while inalienable.*—Lands allotted to

> Indians, inalienable for certain periods of time during which they are held in trust by the United States for the benefit of allottees and their heirs . . . are exempt from taxation by any States or county during the period of trust . . . At 66.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1906).

"THE BURKE LAW"

By its provisions the lands allotted in severalty were to be held in trust for twenty-five years, and the Indians were to become citizens of the United States and of the several States at the instant of approval of their allotments. At 27.

Annual Report of the Board of Indian Commissioners (1906).

[T]he Burke law, by which Indians allotted after May 8, 1906, do not become citizens by virtue of allotment until after the expiration of twenty-five years, the period covered by the protected title to their lands—the trust deed from the United States which keeps Indian allotments inalienable and untaxed for that length of time.

Most of all we deprecate the change because it involves the perpetuation for from twenty to fifty years longer of a distinct class of "Indians untaxed and not citizens," . . .

[T]he wise statesmanship of Senator Dawes and others who framed and carried into effect the Dawes Act of February, 1887, proposed to train Indians for citizenship by intrusting them at once, on allotment, with the duties and the conscious responsibilities of active, local citizenship, and with the manhood stimulating right of sufferage, while the homestead was made inalienable and was freed from taxation by the United States trust deed for twenty-five years. At 8.

The central idea of the "Dawes bill," known as the "general allotment act of 1887," is that the allotment of lands in severalty shall make a United States citizen of the Indian who is thus separated from a tribal life and established on his own land. To save him from the land grabbers and give him a start in industry the United States protects him in the possession of his land by giving him a trust deed making the land inalienable and nontaxable for a period of twenty-five years from the time of the allotment. At 17-18.

Annual Report of the Secretary of the Interior Vol. 1 (1907).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1907).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior Vol. 1 (1908).

Patents in fee are being given to Indians whenever in individual case it is shown that the Indian is capable of caring for his own property.

Every competent Indian should receive his patent in fee and assume the full obligations of citizenship, and the department endeavors to prevent any Indian from shirking this responsibility. At 19.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1908).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1908).

Twenty-two years have passed since the enactment of the general severalty act, familiarly known as the "Dawes bill." Under the provisions of that act more than 70,000 allotments have been made to individual Indians, each allotment subject to a trust patent by which the United States bound itself to hold the land nontaxable, inalienable and not liable to liens of any kind for twenty-five years, in the interest of the Indian to whom it was allotted, and at the expiration of that period of protected title to give to the allotted Indian or his heirs a patent and deed putting him in possession of the allotment in fee simple and free of incumbrance. At 8.

About one-half of those who are now members of this Board were commissioned by the President of the United States before the passage of the general severalty act of 1887. At 10. Bound by agreements and law to preserve for twenty-five years, inalienable and untaxed, the allotments made to Indians, and then to give to each owner a clear title in fee simple to his allotment, the Government should by law make such provisions that its guardianship in trusts of Indian allotments, will not work injustice to white citizens who have settled on land of their own near these protected Indian allotments. At 23-24.

Annual Report of the Secretary of the Interior Vol. 1 (1909).

Allotments.—It has been expected, by the allotment of lands to the Indians in severalty, to largely solve the Indian problem, the theory being that when an Indian received his allotment he would make his home on it, and become a self-supporting citizen. In a measure this result has been attained and the allottee eliminated from further consideration. At 25.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1909).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1909).

REMOVALS OF RESTRICTIONS

Occupying the position of guardian toward its Indian wards, the United States Government has undertaken to protect Indians in the possession of land allotted to them. It gives to allotted Indians "trust patents" which enable them to hold their allotments untaxed and inalienable for twenty-five years. Under the general severalty act allotments made Indians citizens. Under the Burke Act (in effect since May, 1906) allotment does not make Indians citizens; but the trust patents given enable Indians to hold their lands nontaxable and inalienable until the Secretary of the Interior shall decide that an Indian is competent to manage his own land; then the Indian, upon his requesting it, receives a deed in fee simple, and by virtue of that deed becomes a citizen of the United States. At 6.

NONTAXABLE INDIAN LANDS

The protected title of an allotted Indian makes that land for a long period non-taxable. . . .

[P]rovision equal to the amount which upon the average would be received by taxes from Indian allotted lands now nontaxable . . . At 23.

Annual Report of the Secretary of the Interior Vol. 1 (1910).

It has long been apparent that the tribal relations of the Indian must vanish and that he must ultimately take on the responsibilities and obligations of citizenship and so far as possible adapt himself to that course of life to which every individual must yield. At 32.

It is the policy of the Indian Service to grant citizenship or remove the restrictions from the Indian only when he has satisfactorily shown that he is capable in a reasonable degree of managing his own affairs, and where he

possesses an allotment of land to limit his right of alienation so as to require retention of a specific portion thereof as a homestead. There should be no hesitancy on the part of the Government in granting citizenship to the Indian where he shows himself to be qualified. On the contrary, to withhold citizenship tends to discourage the development of the very element of character in him in which the Government is undertaking to stimulate, and if the citizenship is granted to the Indian, he should be held to the same obligations of amenity to social, political, moral, and legal restrictions and obligations as any other citizen, and the Government should no longer undertake to exercise tutelage over him. At 33.

Annual Report of the Secretary of the Interior Vol. 1 (1911).

The Indians in the United States number slightly more than 323,000, of whom about one-third are members of the Five Civilized Tribes in Oklahoma. All are in the process of absorption with the general mass of American citizenship. When the process is complete with respect to any individual Indian he will have lost his tribal status, received in severalty his share of the tribal property, and been freed of all restrictions in dealing with it. He then has the same status as any other citizen and the guardianship of the Federal Government over him is at an end.

The Indian Service is engaged in the work of helping the Indians to fit themselves for American citizenship and in preserving and developing their property until they are able to take full charge of it. This work calls for administrative business ability, knowledge of practical sociological movements, and effective sympathy. The personal interests under the care of the service are of the greatest importance and are mainly concerned with three subjects—health and morals, industrial training, and general education. The property interests involved are of great value and complexity, including lands allotted to

the Indians in severalty and held by them under restrictions which in effect make the Government the guardian of the Indian. At 37-38.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1911).

As an incident a patentee in fee becomes a citizen. By operation of the Dawes Act of February 8, 1887 (24 Stat. L., 388), Indians who received trust patents became citizens; in this way 65,000 Indians attained citizenship before the act was amended by the act of May 8, 1906. Under the act of 1906, by which citizenship accompanies only a patent in fee, at least 400 Indians have become citizens. As all members of the Five Civilized Tribes were made citizens by the Congress, the whole number of citizen Indians is now over 166,000. As yet the possession of citizenship is a potential asset only to most of the Indians; few of them vote or take other part in the affairs of their communities. Nevertheless, their citizenship and taxation, so far as they have taxable property, have enabled the office to take a stand for the admission of their children into public schools, and ultimately will undoubtedly bring nearer the time when the Indians may become in fact citizens of the various States. At 23.

Annual Report of the Secretary of the Interior Vol. 1 (1912).

TAXATION OF INDIAN LANDS

The local white communities on or near Indian lands frequently have justifiable grounds for complaint in the fact that these lands are withheld from development and from taxation. This frequently encourages local sentiment which condones unfair or even illegal methods of separating the Indian from the ownership of such property, and while it furnishes a potent reason why the enforcement of Indian rights frequently can not safely be intrusted to local officials, it makes it all the more imperative that the Indian lands should be opened to general development and especially to local taxation as rapidly as

practicable. In this connection it has been found that Indians who are competent to receive patents in fee often do not apply for these patents because they desire to avoid subjecting their lands to taxation until a sale has actually been made. The applications for patents have been found in most cases to be connected with contracts of sale already made. To cure this abuse steps are being taken to issue patents without request to Indians who should have applied for them. Instructions have recently been issued to superintendents to report all cases of competent Indians who should have patents in fee and have failed to apply for the same. At 53.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1912)

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1912)

The policy of the Government with regard to the allotment of Indian lands has been in general so successful that occasional failures should not be considered a reason for any marked change. It seems to us, however, that the present is a time when particular attention must be paid to the protection of the Indian's property. Twenty-five years have passed since the general allotment act went into effect and on lands allotted under that act the period of protected title will soon begin to expire. Undoubtedly it will find some Indian owners who are not competent to manage their affairs, and as the time approaches for the expiration of protected title on their allotments the question of extending such protection becomes important. At 12-13.

Annual Report of the Secretary of the Interior Vol. 1 (1913).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1913).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior Vol. 1 (1914).

The way out is gradually and wisely to put the Indian out. Our goal is the free Indian. The orphan-asylum idea must be killed in the mind of Indian and white man. The Indian should know that he is upon the road to enjoy or suffer full capacity. He is to have his opportunity as a "forward-looking man." This is not my dictum, for the Government has been feeling its way toward this policy for nearly 40 years. This is the rationale of the whole of our later congressional policy, of the liberality of Congress toward the education of the Indian, of the allotment system, of limitations fixed upon disposition of property. If the course of Congress means aught it means that the Indian shall not become a fixture as a ward.

It is the judgement of those who know the Indian best, and it is my conclusion after as intimate a study as practicable of his nature and needs, that we should henceforth make a positive and systematic upon as increasing number of the Indians of all tribes. I find that there is a statute which significantly empowers the Secretary of the Interior to do this in individual cases. That authority is adequate. And as soon as the machinery of administration can be set in motion I intend to use such authority. If year by year a few from each of the tribes can be made to stand altogether upon their own feet, we will be adding to the dignity of the Indian race and to their value as citizens. To be master of himself, to be given his chance—this is the Indian's right when he has proven himself. And all that we should do is to help him to make ready for that day of self-ownership. At 6-7.

There are many thousand Indians in our charge who are entirely self-supporting, capable, thrifty, farsighted, sensible men. And singularly enough these are most often found among those tribes which were most savage and ruthless in making war upon the whites. Some of these are indeed so farsighted that they do not then become subject to taxation. At 9.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1914).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1914).

Indian land which has heretofore been free from taxation, should contribute its share to the support of those functions of the State government from which the Indian owners derive benefit. Where treaty agreements obligate the Government to maintain the land free from taxation during a trust period of 25 years, or any other period, we believe a method should be devised by which the Federal Government should pay the proportionate share of such taxes. At 8.

Annual Report of the Secretary of the Interior Vol. 1 (1915).

Distinction between Indian citizen and white citizen.—The distinction between the Indian citizen and the white citizen lies mainly in the exercise of the function of governmental supervision.. That some Indians, both citizen and noncitizen, are as fully qualified to manage their own affairs as the average white citizen, is patent to everyone claiming the least knowledge of Indian matters. For the purpose of determining what Indians belong to the competent class, and thereby entitled to assume full control of their property freed from governmental supervision, a commission has been created and has been instructed to

proceed with the examination of Indians who possess the necessary qualifications to entitle them to the unrestricted use of their moneys and properties entirely free from governmental control. When this commission shall have reported, it is then proposed to separate those so qualified from governmental control through the issuance to them of patents if fee for all lands now held in trust for them by the Government, and to transfer to them all funds to which they are entitled, and finally sever the bonds which now hold them as Government wards, either upon application of the individual Indian or by departmental authority, as shall hereafter be decided upon. At 57.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1915).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior Vol. 1 (1916).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1916).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior Vol. 1 (1917).

Declaration of policy.—A new and far-reaching policy has been declared in the interest of the competent Indian, who will no longer be treated as half ward and half citizen, but will be recognized as capable of controlling his property and exercising fully his personal rights. Beyond the general principle, competency or incompetency will, of course, be determined by the facts involved in

individual and exceptional cases. The essential announcements of the new policy are as follows;

1. *Patents in fee.*—To all able-bodied, competent, adult Indians there will be given, as far as may be under the law, full and complete control of all their property. Patents in fee shall be issued to all adult Indians who may, after careful investigation, be found competent, provided that where deemed advisable patents in fee shall be withheld for not to exceed 40 acres as a home. At 38.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1917).

On April 17, 1917, there was announced a declaration of policy for Indian Affairs, as follows:

> During the past four years the efforts of the administration of Indian affairs have been largely concentrated on the following fundamental activities—the betterment of health conditions of Indians, the suppression of the liquor traffic among them, the improvement of their industrial conditions, the further development of vocational training in their schools, and the protection of the Indian's property. Rapid progress has been made along all these lines, and the work thus reorganized and revitalized will go on with increased energy. With these activities and accomplishments well under way, we are now ready to take the next step in our administrative program.
>
> The time has come for discontinuing guardianship of all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency.
>
> Broadly speaking, a policy of greater liberalism will henceforth prevail in Indian administration to the end that every Indian, as soon as he has been determined to be as competent to transact his own business as the average white man, shall be given full control of his property and have all his lands and

moneys turned over to him, after which he will no longer be a ward of the Government. At 3.

Annual Report of the Secretary of the Interior Vol. 1 (1918).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1918).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior Vol. 1 (1919).

No general law provided a means for citizenship of all Indians until 1887 when Congress passed the general allotment act (24 Stats. L., 388), which provided for the allotment of lands in severalty and declared all Indians born within its limits, who shall have complied with certain conditions, to be citizens of the United States. The broad citizenship provisions of this act were modified by Congress when on May 8, 1906, it passed the Burke Act, since which law the issuance of a fee patent has been the primary legal requirement for citizenship of Indians. It is believed that the controlling factor in granting citizenship to Indians should not be based upon their ownership of lands, tribal or in severalty, in trust or in fee, but upon the fact that they are real Americans and are of right entitled to such citizenship. At 71.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1919).

When, however, an Indian has been given a fee simple patent for all of his lands, both original and inherited, and all individual and tribal funds of whatsoever nature turned over to him, that particular Indian will have become a full fledged citizen of the United States in the full sense of all that term implies. He will no longer be

subject in any respect to supervision by the Government, but will have the same right as any other citizen. His contracts will not be subject to governmental approval, but will stand on an equal footing with those of other citizens. There will be no restriction as to trade with him, and in fact whatever rights may be enjoyed by citizens of the United States will be his and he will be subject to arrest at the instance of a United States superintendent or by the Indian police, nor to trial and punishment by the courts of Indian offenses for dismeanors over which those courts now have jurisdiction. At 12.

Annual report of the Secretary of the Interior Vol 1 (1920).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1920).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior Vol. 1 (1921).

Removal of restrictions and land sales.—There were issued to competent Indians 1,692 patents in fee, and sales were approved to purchasers of Indian lands covering approximately 136,000 acres in which patents were to be issued. Certificates of competency were issued for 451 tracts, containing 128,350 acres. The policy of issuing patents in fee to Indians of one-half or less Indian blood without further proof of competency was discontinued. It will be the purpose to test as far as possible the applicant of a patent in fee by actual accomplishments on his land or in some productive occupation before recognizing his competency, and according to the same principle to encourage the thrifty, successful Indian of whatever degree of blood to accept full title to his property with all the rights and obligations of complete citizenship. At 54.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1921).

As is well known, the law provides for issuing to the Indian a trust patent upon the land allotted to him, which exempts it from taxation and restricts him from its sale or encumbrance until he is declared competent to manage his business affairs, when he may, upon application, receive a patent in fee and be free to handle or dispose of his land the same as any white citizen.

It is doubtful if a satisfactory method has been found for determining the competency upon which to base a termination of the trust title. Applications for patents in fee have too often been adroitly supported by influences which sought to hasten the taxable status of the property or to accomplish a purchase at much less than its fair value, or from some other motive foreign to the Indian's ability to protect his property rights.

Notwithstanding the sincere efforts of officials and competency commissions to reach a safe conclusion as to the ability of an Indian to manage prudently his business and landed interests, (experience show that more than two-thirds of the Indians who have received patents in fee have been unable or unwilling to cope with the business acumen coupled with the selfishness and greed of the more competent whites, and in many instances have lost every acre they had). It is also true that many of the applications received for patents in fee are from those least competent to manage their affairs, while the really competent Indians are in large numbers still holding their lands in trust. It is evident to the careful observer that degree of blood should not be a deciding factor to establish competency, as there are numerous instances of full-bloods who are clearly demonstrating their industrial ability by the actual use of their land and who are shrewdly content with a restrictive title thereto that exempts them from taxation. At the same time the instance are far too frequent where those of one-half or

less Indian blood—often young men who have had excellent educational privileges—secure patents in fee, dispose of their land at a sacrifice, put most of the proceeds in an automobile or some other extravagant investment, and in a few months are "down and out," as far as any visible possessions are concerned.

The situation, therefore, suggests the need of some revision of practice as a check upon the machinations of white schemers who covertly aid the issuance of fee patents in order to cheat the holders out of their realty, and as a restraint upon those who are not so lacking in competency as in the disposition to make the right use of it, and also as a stimulant to the thrifty holder of a trust title to accept the entire management of his estate with the full privileges and obligations that follow.

The well-known purposes of the Government are to fit the Indian for self-support and to protect his interest while doing so, and then to expect him to do his best toward independent living. The Government should not be expected to shirk its trust. It should not be made easy for young men to squander their substance and drift into vagrancy, nor for successful landholders to remain under restrictions not justified by their qualifications for citizenship. At 25-26.

Annual Report of the Board of Indian Commissioners (1921).

In none of the letters received from field service men by the board is there the least indication that reservation superintendents and employees are opposed to the general proposition of hastening the time when all Indians will be entirely free from Government supervision of their affairs. The charge has been made that the officials and employees of the Bureau of Indian Affairs purposely hinder any activity which might accelerate the progress of Indians toward independent citizenship, so as to prolong the existence of the bureau and, consequently, extend the

length of the employees' services with the Government. None of the superintendents, field clerks, or farmers who answered the letters of this board even suggested the unwisdom of giving patents in fee which, automatically separating the Indian from Government supervision, tends to reduce the work of the bureau.

On the contrary, almost all of them definitely indicated their approval of turning the Indians loose as soon as the Indians are ready to assume the responsibility of full and independent citizenship. At 7.

Annual Report of the Secretary of the Interior (1922).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1922).

SALES AND REMOVAL OF RESTRICTIONS

The regulations governing the sale of allotted and inherited Indian lands and the issuance of patents in fee and certificates of competency have been modified and revised in many particulars, and as approved bring the practice in these cases more in conformity with transactions between white citizens, particularly in enabling purchasers of Indian lands on the deferred payment plan to assign their interests.

A stricter policy has been followed in issuing patents to Indians on the ground of competency, as seemed to be required in order to more fully protect their interests. At 15.

Annual Report of the Board of Indian Commissioners (1922).

The opinion seems to be held by some people that the paramount duty of Congress and the department is to protect and conserve the property, real and personal, of the Government's Indian wards. No one will deny that

the Government, as a trustee, is obliged to properly care for Indian property, whether lands or moneys. But we believe that no one can successfully deny that the Government, as the guardian of hundreds of thousands of human beings, is under an equal if not a greater obligation to develop and strengthen the intellectual, moral, and physical faculties of its dependent wards in preparation for the time when they will become independent citizens in unrestricted possession of their property. At 2.

Annual Report of the Secretary of the Interior (1923).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1923).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior (1924).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1924).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior (1925).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1925).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior (1926).

The Secretary of the Interior gave only general comments on the progress of allotments.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1926).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior (1927).

TAXATION OF INDIAN LANDS

Operation of the federal tax acts of May 6, 1910 and December 30, 1916, subjecting to State taxation the allotments of Omaha and Winnebago Indians in Nebraska held under extension of trust periods has caused hardship and embarrassment to the Indian allottees affected, as many of the tracts were yielding little income in excess of the tax levied. Under a principle of law recognized by the courts, real property held in trust by the Federal Government is not taxable by the State and exemption of from taxation of property purchased for noncompetent Indians with their trust funds has been heretofore effected through restrictive clauses inserted in deeds conveying such lands to Indians. Exemption rights so specified have been generally sustained by the courts. This situation is such as to indicate the necessity for remedial legislation. At 56-57.

Annual Report of the Commisisoner of Indian Affairs to the Secretary of the Interior (1927).

TAXATION OF INDIAN LANDS

Operation of the federal tax acts of May 6, 1910 and December 30, 1916, subjecting to State taxation the allotments of Omaha and Winnebago Indians in Nebraska held under extension of trust periods has caused hardship and embarrassment to the Indian allottees affected, as many of the tracts were yielding little income in excess of the tax levied. Under a principle of law recognized by the courts, real property held in trust by the Federal Government is not taxable by the State and exemption

of from taxation of property purchased for noncompetent Indians with their trust funds has been heretofore effected through restrictive clauses inserted in deeds conveying such lands to Indians. Exemption rights so specified have been generally sustained by the courts. This situation is such as to indicate the necessity for remedial legislation. At 13.

Annual Report of the Board of Indian Commisisoners (1927).

EXTENSION OF RESTRICTIONS

The general allotment act, sometimes called the "Dawes Act," became law 40 years ago last February. As a result of the operations of that historic measure, and some subsequent legislation, thousands of Indians were prematurely given patents in fee to their allotments and passed from the supervisory care of the Federal Government.

Within the next few years a considerable number of Indians will reach the termination of the periods during which their allotments are held in trust for them by the United States. The question concerning the advisability of the extension of the trust patents will arise repeatedly. With the hope that reliable information can be secured which will enable this board to present recommendations and suggestions pertinent to the issue, a committee of board members has been named to study the effects of declaring Indians to be competent, giving them unrestricted tiltles to their allotments and thus removing them from Federal supervision and protection. At 6.

Annual Report of the Secretary of the Interior (1928).

EXTENSION OF TRUST PERIOD

The period of trust was extended by order of the president on allotments made to Indians of the following named tribes and bands: Nez Perce, Idaho; Prairie Band of Pottawatomie, Kns.; Devils Lake Sioux, N. Dak.; Ton-

kawa (Oakland Reservation), Okla.; and Pawnee, Okla. The period of trust was also extended on lands patented to 16 different bands of Mission Indians in California. At 63.

During the year a circular letter was sent to all superintendents requesting them to submit a list of all Indians under their respective jurisdictions to whom patents in fee were issued prior to 1921, during the trust period and without application therefor. The purpose is to afford relief if possible, through legislation or otherwise, to those whose lands were lost through lack of business efficiency or through taxation. Suits in the name of the United States are now pending to determine the question as to exemption from local taxation, of lands theretofore taxable, which were conveyed to Indians with restrictions against alienation or incumbrance, except with the approval of the Secretary of the Interior, such lands having been purchased for homes and paid for with their trust funds. At 65.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1928).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior (1929).

In its sixtieth annual report the board declares that the secretary's announced policy should meet the general approval of fair-minded forward-looking friends of the Indian people. Its objective is plainly disclosed in the opening paragraph of the statement, "to make the Indian a self-sustaining, self-respecting American citizen just as rapidly as this can be brought about. At 37.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1929).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Board of Indian Commissioners (1929).

We doubt the advisability of adopting as a fixed part of a Federal Indian policy the proposition that there should be continued allotment of lands "with full ownership rights granted to the Indians." We raise this question because the history of the Indians since 1887, when the general allotment act (the Dawes Act) was passed, conclusively shows that the average Indian and his property are soon parted after he is given a patent in fee to his allotment—that is land with full ownership rights. We beg leave to cite what was called the "New Declaration of Policy," promulgated and put into effect in 1917 and which "turned loose" more than 10,000 Indians in three years with generally unsatisfactory results, so unsatisfactory that this policy was terminated by the Secretary of the Interior in 1921.

We have taken the position that before a restricted Indian is given unrestricted possession of his allotment, excepting where a patent in fee automatically follows the termination of the trust period, the department should carefully investigate his case and determine whether he has demonstrated his ability to manage his own affairs without requiring the supervisory care and protection of the Indian Service. In short, we are of the opinion that the process of turning an Indian loose should be an individual, not a wholesale operation. We fear, therefore, that if the remaining unallotted Indians are allotted their lands with full ownership grants the consequences will be identical with the unsatisfactory results of the group policy of 1917, which made certain degrees of blood status the only prerequisite for granting Indians patents in fee instead of individual qualifications. At 5.

The Board of Indian Commissioners, the Lake Mohonk Conference on Indians, the Indian Rights association, and the missionary boards had much to do with the framing and passage of the Dawes Act. The general opinion of the country on this legislation was expressed in the an-

nual report for 1888 of the Board of Indian Commissioners, as follows:

> This bill, which became a law on the 8th of February, 1887, is a great step in advance in our Indian policy, and the day when it was approved by the President may be called the Indian emancipation day. The measure gives to the Indian the possibility to become a man instead of remaining a ward of the government. It affords to him the opportunity to make for himself and his family a home, and to live among his equals a manly and independent life. It offers to him the protection of law and all the rights and privileges and immunities of citizenship.
>
> It is plainly the ultimate purpose of the bill to abrogate the Indian tribal organization, to abolish the reservation system, and to place the Indians on an equal footing with other citizens of the country.
>
> We do not look for the immediate accomplishment of all this. The law is only the seed, whose germination and growth will be a slow process, and we must wait patiently for its mature fruit.

The Dawes Act was revolutionary in that it abruptly changed the character of Indian land ownership from communal to individual, an inversion beyond the comprehension of a primitive people whose way of living was governed by a community state of mind.

The law conferred citizenship upon allottees and provided that an allotment should be held in trust by the Government for 25 years, when a patent in fee would be given the allottee. He then would be released from Federal supervision and could do what he wished with his land.

It was hoped that during this period of Federal trusteeship the Indians would be educated up to a proper appreciation of land possession and value and would hold

their lands and farm them when they were released from restrictions. At 11.

The Burke Act, which amended the general allotment (or Dawes) act of 1887, was passed by Congress in 1906. While it nominally left the trust period at 25 years as provided in the Dawes Act, it gave the Secretary of the Interior rather broad discretionary authority to declare an allotted Indian competent, give him a patent in fee and thus release him from Federal supervision.

For a time the Indian office felt its way somewhat carefully in recommending the issuance of patents in fee under the Burke Act. But this conservatism was cast to the winds some years later when what was known as the "new declaration of policy" was promulgated by the Commissioner of Indian Affairs. At 15.

Allotments.—The results of the Dawes Act and the amendatory legislation have not been what the proponents of the general allotment policy hope for. The statistical data in the Indian Bureau's annual reports show that by reason of allotment tens of thousands of Indians have disposed of their lands, and it is known that the great majority of them sold their allotments for inadequate payments and quickly spent the proceeds. They became landless, moneyless Indians.

The failure of the purpose of the allotment act must be admitted. What has been done can not be undone, but the future handling of Indian lands by the Indian Bureau should be characterized by caution and guided only by consideration for the best interest of the allottees. At 25.

Annual Report of the Secretary of the Interior (1930).

Common sense administration of the affairs of the Indian was not possible under old conditions, since much that should be done by administration has been done by legislation. There is real opportunity at the present time for some constructive legislation by Congress which would open the way to more efficient operation of the problem of the Indian. Concrete suggestions have been

laid before Congress by the Indian Service. The old situation is unsound and will remain so until the Indian takes his place side by side with the rest of our citizenship, with the normal self-respect that goes with self-support. At 24-25.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1930).

The Commissioner of Indian Affairs gave only general comments on the progress of allotments.

Annual Report of the Secretary of the Interior (1931).

We have two major purposes constantly in mind. One is to turn over to the States as many active citizens as possible in lieu of wards supported by a distant Washington government, and the other is to give these people as adequate training in health, education, and economical independence as we can pending the assumption of those responsibilities by the local citizenship. At 12.

Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1931).

To avoid, so far as possible, loss of lands which represent Indian trust funds, through taxation by the state, the purchase of lands which have been taxed and are therefore properly on the tax lists of the county, is discouraged, and superintendents are urged to find suitable tracts which are *still under trust* so that the line of Government supervision and trust and of tax exemption as provided by law or treaty will not be broken.

CANCELLATION OF PATENTS IN FEE

Patents in fee issued to Indians for their allotments prior to 1921 under the so-called "declaration of policy" are being cancelled under the provisions of the act of February 26, 1927 (44 Stat. 1247). More than 300 have been cancelled so far and the number as expected to be greatly increased when applications have been made

under the act of February 21, 1931 (Public 713, 71st Cong.). Each act applies to patents issued during the trust period without application by, or consent of, the patentee. The act of 1931 authorizes cancellation so far as unsold portions are concerned, or the whole where the land has been mortgaged and the mortgage released. The bills enacted into these laws were introduced at the request of the Interior department for the purpose of saving as many as posisble of the homes of Indians imperiled by issuance of patents in fee without their application. The greater number have lost their lands through mortgage foreclosure, or tax sales, the fee patents having become effective upon execution of a deed or mortgage by the patentee. At 38.